

Complete Injustice

The Indian Supreme Court and
the misrule of law in Kashmir

November 2023

KASHMIR
LAW & JUSTICE
PROJECT



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Contents

“Freedom (At the time of Partition)”	6
“The Terrorist”	10
Selected Quotes	12
I. Introduction	14
II. The Misrule Of Law: Confronting A Dominant Narrative	16
III. Instruments Of Illegality: “Legalizing” Occupation, Annexation And Colonization	19
a. <i>Defining Occupation, Annexation, Colonization</i>	19
b. <i>The Basic Order</i>	20
c. <i>Article 370</i>	23
d. <i>Instrument of Accession</i>	25
IV. Sage, Savior, Inside Man: MC Mahajan and India’s Criminal Course of Conduct in IAJK.....	29
<i>Table 1: The Many Roles of MC Mahajan</i>	<i>38</i>
V. Capricious, Not Arbitrary: The Supreme Court’s Jurisprudence Legalizing India’s Criminal Course of Conduct in IAJK.....	40
a. <i>An Unnatural Process of Erosion</i>	41
b. <i>Prem Nath Kaul</i>	41
c. <i>Sampat Prakash</i>	43
d. <i>Mohammad Maqbool Damnoo</i>	44
e. <i>Santosh Gupta</i>	47
f. <i>Dis/integration</i>	47
<i>Table 2: The Capricious Jurisprudence of Article 370.....</i>	<i>50</i>
VI. Denying Liberty: The Supreme Court's Jurisprudence on Arbitrary Detention in IAJK	51
a. <i>Ashiq Hussain Faktoo</i>	53
b. <i>Masarat Alam Bhat</i>	54
c. <i>Mian Abdul Qayoom</i>	55
d. <i>Saifuddin Soz</i>	56

VII. Killing With Impunity: The Supreme Court's Jurisprudence On Extrajudicial Killing In IAJK.....	58
<i>a. General Officer Commanding (Pathribal Fake Encounter)</i>	59
<i>b. Lakhwinder Kumar (Zahid Farooq Sheikh)</i>	61
<i>c. Masooda Parveen</i>	62
VIII. Abusing To Control: The Supreme Court's Jurisprudence On Rape, Maiming And Persecution In IAJK	66
<i>a. Kunan Poshpora (Rape)</i>	66
<i>b. J&K High Court Bar Association (Maiming)</i>	70
<i>c. Anuradha Bhasin (Persecution)</i>	71
IX. Coddling India's Collective Conscience: The Supreme Court's Jurisprudence Of Condoning Violence Targeting Kashmiris	75
<i>a. Maqbool Bhat</i>	75
<i>b. Afzal Guru</i>	77
<i>c. Wandhama and Chattisinghpura</i>	82
X. Apex Lawfare	84
<i>Table 3: International Complicity in India's Consolidation of Colonization in IAJK</i>	<i>90</i>
<i>Appendix A: Terms</i>	<i>96</i>
<i>Exhibit A: Instrument of Accession</i>	<i>98</i>
<i>Exhibit B: Article 370</i>	<i>105</i>
<i>Exhibit C: Basic Order</i>	<i>106</i>
<i>Exhibit D: C.O. 272</i>	<i>114</i>
<i>Exhibit E: C.O. 273.....</i>	<i>116</i>

Freedom
(At the time of Partition)

Let us all give thanks! Freedom has come into our homes!
After all of our waiting, Freedom has finally shown us a glimpse of
itself!

When this Freedom first emerged in British India,
this Freedom heaped untold thousands of bodies in a cauldron of
boiling oil.

In the West, this Freedom showers people with mercy;
over our land, this Freedom leaves nothing but empty thunder.

Poverty, destitution and senseless ruination of our homes,
this Freedom casts a shadow of betrayal over us.

The stuff that our oppressors used to force us slaves to buy from
them,
Freedom now sells in the market but with fancy packaging.

What did you hear about this Freedom? That it was available at
rates we could afford?
No, it's only available in high-end restaurants like Lipton tea.

This Freedom is a hen that lays a few nice golden eggs,
but this Freedom has refused to let the people have any of those
eggs.

This Freedom is like a heavenly fairy that goes from home to
home,
but it's only in certain elite homes that this Freedom fairy flutters.

This Freedom declares: I will not let the rich exploit the poor!
Now, this Freedom exploits us for the elites it conspires with.

This Freedom has become a weight crushing people like the
mountain of Hari Parbat;
for an elite, chosen few, this Freedom is a cut flower arrangement.

While the common folk are bloodied resisting officials'
exploitation,
This Freedom silently enjoys the show, sitting comfortably in the
shade.

While the common folk are mourning, the ruling elites celebrate
like bridegrooms,
consorting with this Freedom in seclusion in their grand homes.

The ruling elites would definitely take good care of the poor if they
only had an opportunity,
but they are busy debating the high-minded ideals of Freedom as
they cruise about in their fancy cars.

Everyone is restless and heartbroken, their hearts overcome with
anguish;
They say: "We would tell you about our suffering, but Freedom
would assault us."

Ghulam Ahmad Mahjoor (d. 1952)
Translated from Koshur/Kashmiri

آزادی



اتنكوادى



The Terrorist

As Boba TaThi emerged from the narrow lane outside her home, it so happened that a military patrol was coming just that way. Little Mister Shafiq took one look at the soldiers and threw a tantrum. He flung himself to the ground, screaming and clawing at his mother's *pheran*. Boba TaThi tried to soothe and distract him to get him to behave.

The officer leading the patrol thought, *This boy is scared to death seeing our patrol*. He decided to try to comfort the little boy. He drew in close to Little Mister Shafiq and said, gently, "Don't be afraid, son. Don't be afraid."

"Ha, yeah right. You think this firecracker is afraid of you?" Boba TaThi responded dismissively. "He wants your gun. When he sees you military people, he wants your guns."

The military officer was confused for a moment. Then he gritted his teeth and muttered, "Terrorist bastard." And scurried away with his patrol as quickly as he could.

Akhtar Mohiuddin (d. 2001)
Translated from Koshur/Kashmiri



The Poisonous Tree of Colonialism

Selected Quotes

1992

“The Indian Government, while refusing access to international organizations and failing to respond seriously to the international human rights procedures of the UN, has claimed that its legal system, free press and civil liberties organizations are adequate to address human rights violations. Sadly this is demonstratively not the case.”

Amnesty International, [India: Torture, rape and deaths in custody](#)

1999

“The Indian army, Special Task Force, Border Security Force, and state-sponsored paramilitary groups and village defence committees-the principal government forces operating in Jammu and Kashmir-have systematically violated these fundamental norms of international human rights law. Under international law, India's state-sponsored militias are state agents and therefore must abide by international human rights and humanitarian law. The government of India is ultimately responsible for their actions.”

Human Rights Watch, [Behind the Kashmir Conflict](#)

2009

“The pattern of legal breakdowns in Kashmir violates basic tenets of international human rights law... Government actors systematically fail to investigate claims, refuse to participate in investigations and prosecutions, and ignore the contempt orders of courts attempting to force their participation in proceedings concerning human rights claims.... A prominent Kashmiri human rights lawyer went as far as to suggest that after the security forces, judges were the second most culpable group for the human rights situation in the state.”

Allard K. Lowenstein International Human Rights Clinic (Yale Law School), [The Myth of Normalcy: Impunity and the Judiciary in Kashmir](#)

2015

“Addressing Jammu and Kashmir's impunity problem, and indeed India's attitude towards impunity, is a challenge; but it is essential to ensure justice to victims of human rights violations, and facilitate the healing process for those who have suffered during the course of Jammu and Kashmir's decades of struggle and alienation.”

Amnesty International, [“Denied”: Failures in accountability for human rights violations by security force personnel in Jammu and Kashmir](#)

2015

“Crimes in Jammu and Kashmir have not been committed despite the Indian State but because of it. The structures of the Indian State, including the Government of Jammu and Kashmir, must be accused of not just standing by while human rights violations have taken place, but they carry a far higher culpability. They must be accused of willfully putting in place structures specifically meant to carry out these crimes.”

Jammu Kashmir Coalition of Civil Society, [Structures of Violence: The Indian State in Jammu and Kashmir](#)

2018

“Impunity for human rights violations and lack of access to justice are key human rights challenges in the state of Jammu and Kashmir. Special laws in force in the state, such as the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 (AFSPA) and the Jammu and Kashmir Public Safety Act, 1978 (PSA), have created structures that obstruct the normal course of law, impede accountability and jeopardize the right to remedy for victims of human rights violations.”

UN Office of the High Commissioner for Human Rights, [Report on the Situation of Human Rights in Kashmir: Developments in the Indian State of Jammu and Kashmir from June 2016 to April 2018](#)

2022

“Amnesty International has monitored the human rights situation in Jammu & Kashmir for several years and found that the Indian government’s clampdown on dissent in Jammu and Kashmir has intensified since 5 August 2019. This intensification has had the impact of establishing increased control over the region through a system of laws, policies and practices that systematically annihilate critical voices and violate the rights to freedom of expression and opinion of journalists and human rights defenders.”

Amnesty International, ["We Are Being Punished By The Law" Three Years of Abrogation of Article 370 in Jammu & Kashmir](#)

I. Introduction

This report is a good faith attempt to describe the nature of India's relationship to Indian-administered Jammu and Kashmir (hereafter, IAJK) and the Indian government's relationship to the people of IAJK. The focus is India's Supreme Court. The ultimate purview is substantially broader.

Our era is one of multiple, accelerating global crises, some of which are widely acknowledged. There are, however, few (if any) compelling solutions on offer. Despite some recognition of these crises, few have seriously (at least publicly) reckoned with the relationship between the still-widely-celebrated "progress" of the last 75 or so years and the crises that are increasingly manifest today.

Critical analysis of those crises would start from, and center, the experience of those marginalized by those systems and structures responsible for delivering that "progress." Those who benefit from a system tend to be beholden to it and to believe its foundational myths; those denied by a system tend to see themselves outside of it and understand its foundational myths as myths. The post-World War II experience of the people of IAJK is unique. Contests over their land and resources have been central to the establishment and operation of the post-World War II order and its institutions—including the establishment of post-colonial constitutional democracies and the United Nations (if you will, major institutional drivers of that "progress"). Those contests, and their context, have been widely acknowledged as critical to global peace and security. Yet the people of IAJK have been marginal to those institutions, and their experience marginalized by them.

The experience of the people of IAJK has much to tell us about the crises that are now

manifest and the reality of the prevailing order. Our analysis is intended to advance the understanding of what that experience has to tell us through grounding ourselves in factual history and the principles of international law. The conclusions and implications of our analysis are sobering and might be summarized as follows:

- Constitutionalism does not guaranty human rights or the rule of law.
- Systems of governance that are widely recognized as democratic can be (and are) as unrepresentative and more repressive than systems widely recognized as authoritarian or autocratic.
- Our era is not post-colonial; decolonization has not even started in some places.
- Bad faith is rampant, including (and perhaps especially) among the powerful. However, it is often not recognized, especially in the powerful.
- Nation-states (and the notions of people-as-nation, sovereignty and territorial integrity on which they are based) are often the problem. They are not fit to solve the problems they create or the crises they nourish.
- The international community and the United Nations have not been guarantors of international peace, security or peremptory norms. They are often ineffective (if we take their commitments seriously) and have aided and abetted the commission of grave violations of the peremptory norms (like human rights and the rule of law) on which their legitimacy and credibility depend. Even on issues that are central to the international order (like IAJK), those violations are blatant,

systematic, longstanding and not engaged with or addressed in good faith.

We too often presume the goodness and good faith of powerful systems, states, institutions and people. The powerful have a vested interest in, and the wherewithal to promote, the perception of their goodness and good faith. We too often also presume the badness and bad faith of disempowered people. The perception of the powerful as good faith actors in fact often depends on the demonization and dehumanization of the disempowered (on whose disempowerment the power of the powerful seems to depend). The powerful have the wherewithal to promote the demonization and dehumanization of the disempowered. And they often have the support of powerful friends and allies in their disinformation.

To paraphrase Hannah Arendt, successful disinformation requires the rearrangement of facts to produce an alternate reality (different from factual reality) that serves the interests of the powerful. Our analysis demonstrates that India's Supreme Court and eminent Indian jurists like Mehr Chand Mahjan have not only legalized grave illegalities with respect of IAJK and Kashmiris, they have also played a critical role in producing an alternate reality regarding IAJK and its people that serves (illegal) Indian interests by legalizing Indian disinformation demonizing and dehumanizing IAJK and Kashmiris. In IAJK, the Indian government, the colonizer and violator, is described as a "democracy" whose "security forces" are "countering terrorism." Those who have stood and stand against colonial domination and for democracy and human rights (at unfathomable personal cost) in IAJK are described as "terrorists." Despite the UN Security Council's direct involvement and knowledge of the situation in IAJK since January 1948, the international community's self-conceived guarantors of democracy, human rights and the rule of law actively promote (with straight faces) India as a

"democracy," "defender of human rights," "protector of the rule of law" and even as a "global leader in counter-terrorism."

In the case of IAJK, Indian disinformation is longstanding (dating at least to October 1947) and has been remarkably successful. IAJK has long been a totally controlled and manipulated space. In recent years, it has also become a totally censored space. Far too many discussions around IAJK (even earnest ones) never begin to approach its factual reality. The work of countering disinformation and the badness and bad faith of states and state-aligned actors is exceedingly difficult because of their structural and material advantages but also because we have been conditioned to show deference to states—as credible, legitimate and proper authorities. We fail to see their badness and bad faith, even when entirely obvious. Our analysis demonstrates a pervasive dishonesty regarding India's Supreme Court, India's relationship to IAJK and the Indian government's relationship to the people of IAJK. We have refused to see what is obvious. We are all complicit.

We hope this work will contribute to the monumental task of turning the tide of Indian disinformation regarding IAJK and its people in the hopes of fostering more grounded, good faith global engagement with the crises impacting their lives. We also hope that it contributes to the broader project of principled engagement with the various (inevitably interrelated) crises we see today and the development of more robust, grounded understandings of our contemporary, fraught circumstances and of potential solutions to the crises we face. We seek real positive change and real progress. We encourage you to engage in good faith with this report and its implications and, when working towards solutions to the crises we all face, center the experience of the people of IAJK and other disempowered, marginalized people.

II. The Misrule Of Law: Confronting A Dominant Narrative

Constitutionally, India is a sovereign, socialist, secular, democratic republic constituted to secure justice (social, economic and political), liberty (of thought, expression, belief, faith and worship) and equality (of status and opportunity) for all its citizens.¹ India illegally claims sovereignty over IAJK and illegally claims the people of that territory as its citizens. The Indian government has actively prevented democracy in IAJK. The expansive, longstanding, grave and well-documented violations for which it is responsible against the people of IAJK have been secured by systematic injustice (social, economic and political), the denial of liberty (of thought, expression, belief, faith and worship) and inequality (of status and opportunity).

The Supreme Court of India (hereafter, the Supreme Court) is India's "apex" court—it enjoys ultimate, binding authority to interpret India's constitution and laws.² It is empowered to ensure that "complete justice" is done.³ It has jurisdiction (or authority) to issue writs (or orders) and to initiate proceedings itself (or "take *suo moto* cognizance") to redress violations of fundamental constitutional rights.⁴ As articulated by its third Chief Justice (Mehr Chand Mahajan, who is profiled extensively in Section IV below), the Supreme Court has the power to "grant special leave to appeal where it felt that justice demanded it" which "can always be exercised" and the power "to protect and guarantee the fundamental rights granted to the citizens and the residents in the Constitution."⁵ The

Supreme Court has acted in accordance with that power. It has repeatedly initiated proceedings to redress constitutional violations. It has repeatedly failed to do so in cases involving Kashmiri victims.

"Rule of law" means principled governance pursuant to which all persons and entities (including the state) are accountable under laws that are supreme, public and consistent with international human rights norms and standards which are equally, fairly, consistently, independently and transparently adjudicated and enforced.⁶ Rule of law is an essential prerequisite to democracy, all rights and all fundamental freedoms. India's constitution is supposed to guarantee the rule of law.⁷ Its Supreme Court is empowered to uphold the rule of law. It has failed to do so with respect to IAJK.

The Supreme Court's most widely acknowledged failure to uphold the rule of law is the *ADM Jabalpur* decision (which legalized the suspension of right of *habeas corpus* during a declared state of emergency).⁸ Even among critics of the Supreme Court, such failures have generally been considered "aberrations."⁹ While some contemporary critics have described a deeper failure of the Supreme Court as an institution, their criticisms have generally conceived of that failure as recent.¹⁰

¹ See Preamble, The Constitution of India, <https://legislative.gov.in/constitution-of-india/>

² See Article 141, The Constitution of India, <https://legislative.gov.in/constitution-of-india/>

³ See Article 142, The Constitution of India, <https://legislative.gov.in/constitution-of-india/>

⁴ See Article 139, The Constitution of India, <https://legislative.gov.in/constitution-of-india/> and *S.P. Gupta v. Union of India* (1981) AIR 1982 SC 149, 1981 Supp (1) SCC 87, 1982 2 SCR 365, <https://indiankanoon.org/doc/112850760/> [December 30, 1981].

⁵ Mahajan, Mehr Chand, *Looking Back: The Autobiography of Mehr Chand* (Bombay: Asia Publishing House, 1963), pp.196-197.

⁶ See United Nations, What is the Rule of Law, <https://www.un.org/ruleoflaw/what-is-the-rule-of-law/>

⁷ Including pursuant to Articles 13-16, 19, 21 and 142, See The Constitution of India, <https://legislative.gov.in/constitution-of-india/>

⁸ Additional Judicial Magistrate, Jabalpur v S S Shukla etc etc, Supreme Court of India, 1976 AIR 1207, 1976 SCR 172 (1976).

⁹ See, e.g., Shah, Justice A.P., "Justice A.P. Shah: Powerful Executive Has Sidelined All Institutions, This is How Democracy Dies," *The Wire*, August 18, 2020, <https://thewire.in/government/justice-a-p-shah-powerful-executive-has-sidelined-all-institutions-this-is-how-democracy-dies>

¹⁰ See, e.g., Mehta, Pratap Bhanu, "The long disarm of the law," *Indian Express*, August 17, 2019, <https://indianexpress.com/article/opinion/columns/kashmir-article-370-lockdown-ladakh-supreme-court-the-long-disarm-of-the-law-5911261/>; Bhuwania, Anuj, "The crisis of legitimacy plaguing the Supreme Court in Modi era is now hidden in plain sight," *Scroll.in*, December 1, 2020, <https://scroll.in/article/979818/the-crisis-of-legitimacy-plaguing-the-supreme-court-in-modi-era-is-now-hidden-in-plain-sight>; Khaitan, Tarunabh, "Killing a Constitution with a Thousand Cuts: Executive

That failure is not an aberration and is not recent with respect to IAJK.

Regarding IAJK and its people, the Supreme Court's failure is obvious, consistent, deep, longstanding and systematic. The Supreme Court has led the Indian judiciary in reinforcing, in theory and in practice, that the rule of law does not apply in IAJK. Instead of upholding the rule of law, the Supreme Court has been instrumental in India's illegal course of conduct in IAJK—facilitating and legitimating colonization, the prevention of democracy and the violation of its people's rights and fundamental freedoms.

There are prominent instances in various (at least) nominal, “functioning” democracies where superior or apex courts whose authority derives from a commitment to the rule of law have manifestly failed to uphold the rule of law, particularly with respect to the fundamental rights of disfavored groups during states of emergency. These instances include the *Korematsu* decision in the United States (which legalized the internment of people of Japanese ancestry in the United States during World War II).¹¹ That decision, even if technically not overturned as a matter of law, is generally understood as legally invalid and violative of fundamental and constitutional rights. There are other instances, like the *Citizenship Law Case* decision in Israel (which legalized the prohibition of granting residency or citizenship status for the purpose of family unification of Palestinians),¹² which have been extremely controversial, including within the relevant national judiciary and polity, and broadly understood to be discriminatory.

As it relates to IAJK, and in particular its Kashmiri Muslim population, the Indian judiciary, led by its Supreme Court, has consistently, unabashedly and essentially without controversy legalized the violation of fundamental rights, including by the standards of its own constitution. India has imposed a permanent, longstanding emergency in IAJK.¹³ India has annexed and colonized IAJK.¹⁴ India is responsible for atrocity crimes (both war crimes and crimes against humanity)¹⁵ in IAJK. All of this has been legalized by the Indian judiciary and its Supreme Court. None of it has been recognized for what it is, or even that it is illegal and discriminatory, in India or internationally.

Aggrandizement and Party-state Fusion in India,” *Law & Ethics of Human Rights*, vol. 14, no. 1, August 7, 2020, <https://doi.org/10.1515/lehr-2020-2009>, and Mehta, Pratap Bhanu, “PB Mehta writes: SC was never perfect, but the signs are that it is slipping into judicial barbarism,” *Indian Express*, November 18, 2020, <https://indianexpress.com/article/opinion/columns/supreme-court-arnab-goswami-bail-article-32-pratap-bhanu-mehta-7055067/>.

11 *Korematsu v. United States*, Supreme Court of the United States, 323 U.S. 214, 65 S. Ct. 19 (1944), <https://www.law.cornell.edu/supremecourt/text/323/214>.

12 *MK Zahava Gal-On (Meretz-Yahad) v Attorney General*, Supreme Court of Israel, HCJ 466/07 [2012]. See <https://www.adalah.org/uploads/oldfiles/newsletter/eng/mar12/docs/Case%20Review%20Citizenship%20Law%20English.pdf>.

13 Ghosh, Shrimoyee Nandini, “Crisis Constitutionalism, Permanent Emergency and the Amnesias of International Law in Jammu and Kashmir,” *Third World Approaches to International Law Review*, May 28 2020, <https://twallr.com/crisis-constitutionalism-permanent-emergency-and-the-amnesias-of-international-law-in-jammu-and-kashmir/>.

14 See Section III of this report. See also “Kashmir & International Law: An Activist’s Guide,” Kashmir Law and Justice Project, September 2020, <https://www.kljip.org/articles/kashmir-international-law-an-activists-guide>.

15 See, e.g., “Structures of Violence: The Indian State in Jammu and Kashmir,” International Peoples’ Tribunal on Human Rights and Justice in Indian-Administered Kashmir and The Association of Parents of Disappeared Persons, 2015, <https://jkccs.info/structures-of-violence-the-indian-state-in-jammu-and-kashmir/>.



Fruit of the Poisonous Tree in IAJK

III. Instruments Of Illegality: “Legalizing” Occupation, Annexation And Colonization

IAJK is territory illegally occupied by India which India has illegally annexed and colonized.¹⁶ The Indian judiciary, led by the Supreme Court, has facilitated and “legalized” these serious violations of international law. By failing to intervene or even call India to account, the international community has aided and abetted these longstanding violations (and innumerable other serious violations, including those consequential to these formative violations) which remain ongoing and unremedied. In this Section, we briefly outline operative legal concepts, provide a concise explication of their operation in the subject context and describe the Supreme Court’s role with respect thereto.

a. Defining Occupation, Annexation, Colonization

While often invoked polemically, the terms “occupation,” “annexation” and “colonization” are legal terms. Occupied territory is territory that is effectively controlled by a state that does not have sovereign title over the territory.¹⁷ IAJK is occupied territory because it is effectively controlled by India and India has never had, and does not have, sovereign title over the territory. This is widely recognized, including by the UN (the UN Security Council’s resolutions regarding the territory of the Princely State of Jammu and Kashmir (hereafter, the Princely State), which includes IAJK, presuppose that India does not have sovereign title over the territory).¹⁸ In fact,

authorized representatives of the UN Security Council were explicit that India (and Pakistan) would only obtain legal title to territory of the Princely State at the conclusion of a UN-sanctioned process for determining its political future.¹⁹ India’s occupation of IAJK is illegal because it was not legally authorized (by the UN Security Council or otherwise). India’s illegal occupation of IAJK began in October 1947 and continues to this day. Because IAJK is occupied territory it is, by definition, a place of armed conflict under international law and, as such, subject to international humanitarian law (in addition to international human rights law).

Annexation occurs when a state proclaims sovereignty over territory to which it does not have legal title or takes steps to make an occupation permanent (occupation is temporary by definition—an occupying power cannot acquire legal title through occupation).²⁰ India’s longstanding, official mantra regarding IAJK (and the territory of the Princely State)—that the territory is an “integral part” of India—is a proclamation of annexation. Although annexation may have occurred earlier, we conservatively date India’s annexation of IAJK to October 31, 1951, when a constitutional (or constituent) assembly was convened in the State of J&K (hereafter, the J&K Constituent Assembly) with a mandate to, among other things, validate IAJK’s accession to India and establish a State of J&K

¹⁶ These concepts are briefly described here. For a more fulsome explanation, please see “Kashmir & International Law: An Activist’s Guide,” Kashmir Law and Justice Project, September 2020, <https://www.kljp.org/articles/kashmir-international-law-an-activists-guide>.

¹⁷ See International Committee of the Red Cross, “Contemporary challenges to IHL – Occupation: overview,” ICRC, June 11, 2012, <https://www.icrc.org/en/doc/war-and-law/contemporary-challenges-for-ihl/occupation/overview-occupation.htm> and Geneva Academy of International Humanitarian Law and Human Rights, “Military occupation: Elements of occupation,” RULAC, September 4, 2017, <http://www.rulac.org/classification/military-occupations#collapseIaccord>.

¹⁸ There is ample evidence of this fact, including the applicable resolutions of the UN Security Council and the UN Commission for India and Pakistan (including [Resolution 47](#) [21 April 1948], [Resolution 51](#) [3 June 1948], [Resolution 91](#) [30 March 1951], [Resolution 96](#) [10 November 1951], [Resolution 98](#) [23 December 1952], [Resolution 122](#) [24 January

[1957](#)] and [Resolution 126](#) [2 December 1957]).

¹⁹ See, for example, Dixon, Owen, “Letter dated 15 September 1950 from the United Nations Representative for India and Pakistan to the President of the Security Council transmitting his report,” September 15, 1950, Appendix C – Telegram 18 August 1950 from UN Representative for India and Pakistan to the Prime Minister of India, <https://digitallibrary.un.org/record/632731?ln=en>.

²⁰ See International Committee of the Red Cross, “Annexation [prohibition of],” ICRC, <https://casebook.icrc.org/glossary/annexation-prohibition> and International Committee of the Red Cross, “Occupation and international humanitarian law: questions and answers: 3. What are the most important principles governing occupation?” ICRC, August 4, 2004, <https://www.icrc.org/en/doc/resources/documents/misc/634kfc.htm>.

constitution (hereafter, the J&K Constitution) that defined India's powers over IAJK.²¹

Colonization is the “subjection of peoples to alien subjugation, domination and exploitation” and occurs when a state actually or effectively denies an indigenous population its right to self-determination, including by actually or effectively annexing, or claiming or exercising sovereignty over, that population's territory.²² Like its annexation of IAJK, India's colonization of IAJK occurred no later than October 31, 1951.

In order to understand occupation, annexation and colonization in IAJK and the Supreme Court's role in the commission and “legalization” of these major illegalities, some historical context is necessary.

b. The Basic Order

“Jurisdiction” means proper legal authority. A court can only adjudicate matters over which it has valid jurisdiction. A court is incompetent to adjudicate matters over which it lacks jurisdiction. A court adjudicating matters over which it lacks jurisdiction is acting extralegally, or outside the bounds of what is legally authorized. The Supreme Court did not claim, and had no legal basis to claim, valid jurisdiction over the State of J&K until May 14, 1954 (that is, over six years after India now claims IAJK became India). The purported legal basis for the Supreme Court's exercise of jurisdiction over IAJK is The Constitution

(Application to Jammu and Kashmir) Order of May 14, 1954 (hereafter, the Basic Order).²³

India's president issued the Basic Order claiming “powers conferred by clause (1) of article 370 of the Constitution.” Through the Basic Order, the Indian government claimed to, among other things: (1) extend Indian citizenship to the 'permanent residents' of the State of J&K (formerly ‘State Subjects’ of the Princely State); (2) extend the fundamental rights of the Indian constitution to the State of J&K; and (3) extend the jurisdiction of the Supreme Court to the State of J&K.²⁴ Note that each of these measures is an act of annexation (as a step that makes occupation permanent) and therefore illegal (and invalid). Note that these measures also constitute violations of international human rights law and international humanitarian law, which requires an occupying power to respect the laws in force in the territory it occupies.²⁵

In issuing the Basic Order (and extending the jurisdiction of the Supreme Court to the State of J&K), India's president claimed “the concurrence of the Government of the State of Jammu and Kashmir.” He did so because Article 370 of India's constitution (hereafter, Article 370)²⁶ provided that the State of J&K would be governed by its own constitution and be generally exempt from India's constitution (with the exception of Article 1 (*Name and territory of the Union*)). Under Article 370, provisions of India's constitution could only be extended to the State of J&K if India's president issued an order and the government of the State of J&K (hereafter, the J&K Government)

²¹ This constitutional or constituent assembly was convened pursuant to elections organized by an unelected, undemocratic, appointed (by Hari Singh) government of the National Conference party (closely allied with, and collaborating with, the Indian National Congress government in India) while much of the political leadership of IAJK was in exile, the remaining opposition in IAJK was severely repressed and all opposition candidates (who were not permitted nomination) boycotted the election. Through Resolution 91 of 1951, the UN Security Council affirmed that convening a constituent assembly and “any action that such assembly might attempt to take to determine the future shape and affiliation of the entire State or any part thereof would not constitute a disposition of the State” in accordance with the established principle that such disposition would be made through a democratic, free, impartial plebiscite conducted under United Nations auspices. Pursuant to Resolution 122 of 1957, the UN Security Council reaffirmed Resolution 91 of 1951.

²² See Declaration on the Granting of Independence to Colonial Countries and Peoples, General Assembly resolution 1514 (XV) of 14 December 1960, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/Independence.aspx>. The Declaration on the Granting of Independence to Colonial Countries and Peoples is a formal and authoritative statement of longstanding norms and principles in international law and is accepted as customary international law (binding on all states).

²³ For the full text of the Basic Order, see [Exhibit C](#).

²⁴ Other key substance of the Basic Order included: (1) adding Article 35A to the Indian Constitution, which gave the legislature of the State of J&K exclusive jurisdiction over defining ‘permanent residents’ and their special rights and privileges (including with respect to employment in the government of State of J&K and the acquisition of immovable property); (2) granting the Government of India emergency powers in the event of external aggression; (3) abolishing the State of J&K's customs regime (the State of J&K had its own customs regime); and (4) empowering the Government of India to make decisions affecting the disposition of the State of J&K subject to the consent of the government of the State of J&K.

²⁵ See “Kashmir & International Law: An Activist's Guide,” Kashmir Law and Justice Project, September 2020, <https://www.kljp.org/articles/kashmir-international-law-an-activists-guide>.

²⁶ For the full text of Article 370 (as enacted), see [Exhibit B](#).

independently concurred.²⁷ The theory of Article 370, necessitated by India's claim that the purported accession of the Princely State was legally valid, was that the State of J&K was an independent sovereign. If the Princely State became India through a treaty between sovereigns (an "instrument of accession"—see Section III(d) below), any "extension" beyond the terms of that treaty required the agreement of that independent sovereign.²⁸ Accordingly, in issuing the Basic Order with the concurrence of the J&K Government, India's president was claiming the satisfaction of a legal condition to the valid exercise of a power under Article 370.

The basis of India's president's claim to the concurrence by the J&K Government was a resolution previously adopted by the J&K Constituent Assembly on February 15, 1954. The J&K Constituent Assembly was a body constituted by an autocratic, anti-democratic ruler through a manipulated, anti-democratic electoral process in 1951. Hari Singh (the scion of the British colonial Dogra dynasty who claimed to rule the post-Partition territory of the Princely State, a tyrant and autocrat who was responsible for grave, widespread violations against the people of the Princely State, including ethnic cleansing and genocide) appointed (without any popular mandate) an Indian-client All Jammu and Kashmir National Conference (hereafter, the National Conference) government in the State of J&K in March 1948. That government was led by Sheikh Abdullah as its Prime Minister.

Abdullah, the most prominent leader of the National Conference, was, since at least 1939,

an overt ally of and collaborator with Jawaharlal Nehru (the first Prime Minister of India) and his Indian National Congress (hereafter, the Congress), the party that represented would-be Indian interests prior to Partition and formed the post-Partition Indian government. In October 1947, when every other political leader of significance in the Princely State was in prison or exile as part of Hari Singh's government ongoing campaign of autocratic political repression, Abdullah was free (at Nehru's behest), empowered by Hari Singh to travel and speak and be paraded by India internationally to legitimate India's claim that not just the State, but the "people of Kashmir," wanted both India's "military aid and...the accession of the State to India."²⁹ As representatives of the Azad Kashmir government (a "free" government formed by the most prominent and popular pro-democracy party in the Princely State (the All Jammu and Kashmir Muslim Conference, hereafter the Muslim Conference) in response to genocidal killings carried out by Hari Singh's forces in conjunction with the Hindu supremacist *Rashtriya Swayamsevak Sangh*) elucidated for the UN, neither the National Conference, nor Sheikh Abdullah as its leader, had ever won or demonstrated a popular mandate.³⁰ Abdullah had no valid claim to

29 See "Letter from the Representative of India Addressed to the President of the Security Council Dated 1 January 1948," in "United Nations Commission for India and Pakistan: Annexes to the Interim Report," Annex 28, p. 2, para. 5, <https://digitallibrary.un.org/record/1298395?ln=en>.

30 See "Letter from the 'Azad Kashmir Government' to the Chairman of the United Nations Commission for India and Pakistan July 9, 1948," in "United Nations Commission for India and Pakistan: Annexes to the Interim Report," Annex 20, p.3, para. 7, <https://digitallibrary.un.org/record/1298395?ln=en>. Sardar Ibrahim Khan's letter to the UNCIP is worth reading in full. A relevant excerpt: "Thus there are two principal political parties in Jammu and Kashmir. There is the Muslim Conference, under the able leadership of Chowdhury Ghulam Abbas, which enjoys the support of the vast majority of the Muslims of Jammu and Kashmir, The other is the National Conference led by Sheikh Mohammed Abdullah, who has been a paid agent of the Indian National Congress for many years and who has been nominated by the Maharaja as Prime Minister of Kashmir at the instance of the Government of India. It is necessary to emphasise this fact, in view of the claims frequently advanced by, and on behalf of, Sheikh Abdullah that he represents the majority of the people of Kashmir. It should be remembered that the only time Sheikh Abdullah's Party was returned to the State Assembly was on the Muslim Conference ticket, and that he has never fought or won any election on the National Conference ticket. His elevation to the post of Prime Minister is due solely to nomination by the Government of India and the Maharaja, and is not the result of a democratic election either by the people or by the State Assembly. The fact that Sheikh Abdullah continues to keep in jail thousands of Muslim Conference leaders and workers, and that he is fighting shy of a fair and impartial plebiscite under the supervision and control of the United Nations, is sufficient to expose the hollowness of his claim to be the representative of the people of Jammu and Kashmir."

27 The exception to this general rule was for matters specified in the Instrument of Accession (i.e., communications, defense, and foreign affairs), in which case, under Article 370, India's president could extend provisions of India's constitution in consultation with the government of the State of J&K.

28 While India's legal stances regarding the Princely State were inconsistent, opportunistically invoked and constantly evolving through the late 1940s and the 1950s, India continued to maintain (at least at times) that the State of J&K (or the Princely State) was an independent sovereign until at least 1957. See, for example, Graham, Dr. Frank P., "Letter dated 53/03/27 from Dr. Frank P. Graham, United Nations Representative for India and Pakistan, to the Secretary-General transmitting his 5th report to the Security Council," March 27, 1953, Annexes I and IV, <https://digitallibrary.un.org/record/605398?ln=en> and Jarring, Gunnar, "Report on the India-Pakistan question submitted in pursuance of the resolution of the Security Council of 21 February, 1957 [S/3793]," February 21, 1957, para. 19, <https://digitallibrary.un.org/record/574842?ln=en>.

represent the people of the Princely State or the State of J&K.

Hari Singh, himself lacking legal authority over the Princely State and the State of J&K,³¹ “authorized” Abdullah to constitute a democratically-elected constituent assembly in the State of J&K. Abdullah, and his National Conference government, did organize elections in 1951. However, the National Conference government denied participation by non-National Conference parties and candidates. The leaders of other parties, including the Muslim Conference, were exiled, imprisoned and persecuted. Despite this repression, non-National Conference candidates attempted to stand for the elections. The National Conference government persecuted them and prevented them for doing so. In protest, the non-National Conference parties boycotted the elections. Through these “elections,” National Conference candidates won every available seat in the J&K Constituent Assembly unopposed.³²

The J&K Constituent Assembly’s mandate included: (1) deciding the question of the State of J&K’s accession, (2) framing the J&K Constitution and (3) deciding the sphere of India’s jurisdiction over the State of J&K.³³ Through Resolution 91 of 1951, the UN Security Council affirmed the legal incompetence of the J&K Constituent Assembly to decide the political future of any territory of the Princely State. India itself agreed to this proposition at the UN Security Council.³⁴ After that, and before the February

15, 1954 J&K Constituent Assembly resolution that provided the purported prior concurrence to the Basic Order (required by Article 370), the Indian government ordered a purge of its client National Conference government in the State of J&K, dissolving the government and arresting a large number of people including Abdullah.³⁵ Those purged were the primary agents of the Congress and the Indian government in the State of J&K, the negotiators of Article 370 on behalf of the State of J&K, the conveners and leaders of the J&K Constituent Assembly and the men the Indian government claimed (without factual legal basis) had popular support in the State of J&K (and therefore the presumptive authority to represent the people of the State of J&K in all of the foregoing).

Accordingly, the legally required concurrence by the State of J&K that India’s president claimed to have obtained for the Basic Order came from a partisan, non-representative, autocratic Indian-client regime that was manipulated and controlled by India and acting at India’s behest and pleasure. That regime had no mandate from the people it claimed to represent or legal authority (as explicitly confirmed by UN Security Council Resolution 91). Rather than the concurrence of the government of an independent sovereign, this purported concurrence was a legally invalid act of political self-dealing. Therefore, while a major violation of international law (as an act of annexation and a violation of international humanitarian law), the Basic Order was also legally invalid under India’s own Article 370. The Supreme Court

31 For an explanation of this fact, see Section III(d) [Instrument of Accession] of this report.

32 See, for example, Schofield, Victoria, Kashmir in Conflict India Pakistan and the Unending War (New York: I.B.Tauris & Co Ltd, 2003), pp.73-79.

33 The other key mandates of the J&K Constituent Assembly were to decide: [1] whether or not to retain the Maharaja as a constitutional head of state and [2] whether to compensate landlords in connection with land reforms.

34 At the 538th meeting of the UN Security Council on March 29, 1951, the Indian representative stated: “Some members of the Council appear to fear that in the process the Kashmir Constituent Assembly might express its opinion on the question of accession. The Constituent Assembly cannot be physically prevented from expressing its opinion on this question if it so chooses. But this opinion will not bind my Government or prejudice the position of this Council.” Graham, Dr. Frank P., “Letter dated 5/10/15 from Dr. Frank P. Graham, United Nations Representative for India and Pakistan, to the Secretary-General transmitting his report to the Security Council,”

October 15, 1951, p.11, <https://digitallibrary.un.org/record/479458?ln=en>. India’s client head-of-state in the State of J&K, Sheikh Abdullah was also cognizant of the violation that was the convening of the J&K Constituent Assembly. His January 1951 advice to N. Gopalaswami Ayyangar, eminent lawyer, former Prime Minister of Jammu and Kashmir for the British colonial Dogra dynasty (1937–1943), Indian minister without portfolio in charge of Kashmir affairs (October 1947–1952), member of the thirteen-member Drafting Committee for the Indian constitution, primary draftsman of Article 370, leader of the Indian delegation to the UN (1948, 1952), Indian Minister of Defense (1952–1953) was: “it would be expedient that the draft proclamation for convening the Constituent Assembly should be as short and simple as possible and should avoid specific reference to matters which might later on involve the Government of India in controversy with the United Nations.” See Noorani, A.G., 370: A Constitutional History Of Jammu And Kashmir (Oxford University Press, 2011), p.90.

35 See, for example, Schofield, op. cit., pp.91-97. The mass detention and lockdown of August 2019 in Kashmir is in certain respects resonant with the mass detention and lockdown of August 1953.

did not have, and does not have, jurisdiction over the State of J&K (or IAJK) or its people. In asserting such jurisdiction, the Supreme Court acted extralegally. That illegal act has produced an extended, illegal course of conduct and decades of further violations.

c. Article 370

The above analysis regarding the Basic Order presupposes the validity of Article 370 itself. However, Article 370 is also invalid. Article 370 is derivative of an “instrument of accession” that Hari Singh purportedly signed on October 26 or 27, 1947 (hereafter, the Instrument of Accession).³⁶ Pursuant to that instrument, Hari Singh purportedly agreed to accede the Princely State to India on a limited and conditional basis.

The Indian theory of the Instrument of Accession is that it is a treaty entered into by duly authorized representatives of two sovereign states, the Princely State and the Republic of India.³⁷ The Instrument of Accession was conditional on Hari Singh (or his heirs or successors) retaining executive and administrative authority over the Princely State and granted the Indian legislature only limited authority to make laws applicable to the Princely State and only in respect of the following discrete, scheduled matters: defense, external affairs and communications. The Instrument of Accession explicitly does not commit Hari Singh (or his heirs or successors) to accept any future constitution of India and reserves an unfettered right to negotiate the terms of a potential arrangement with India in respect of a future Indian constitution. It does not purport to transfer sovereignty over the Princely State to India. Instead, it is an instrument pursuant to which

a presumptive sovereign (Hari Singh) retains his sovereignty and conditionally and temporarily delegates limited authority over a few discrete matters to another sovereign (India), purportedly for purposes of securing military assistance.

India invited representatives of the unelected, non-representative, autocratic Indian-client National Conference government of the State of J&K, led by Abdullah, to participate in India’s constituent (or constitutional) assembly in 1949. These Indian client politicians (led by Abdullah) negotiated what would become Article 370 with their patron, India. At the time, this was recognized as a serious problem by representatives of the UN that would “lead to the gravest consequences.”³⁸ India’s representative at the UN Security Council, its Minister of External Affairs and most senior diplomat, addressed these concerns by making the following representations to the UN:

While the constitution of India, which, inter alia, provides for the relations of acceding States to the Government of India was under consideration, it would have been unfair to the Government and people of the State of Jammu and Kashmir to deny them the opportunity of participating in the discussion of that constitution. Such participation was not intended to and does not, in fact, alter the Government of India’s determination to abide, in the matter of accession, by the freely declared will of the people of Jammu and Kashmir. Should that will be against the State continuing to be part of India, if and when it comes to be expressed in a constitutional way under conditions of peace and impartiality, the representation of the State in the Indian Parliament would automatically cease and the provisions of the Constitution of

³⁶ The existence of this instrument at all is disputed by some authorities, including Alistair Lamb. See, e.g., his *KASHMIR: A DISPUTED LEGACY 1846-1990* (Hertingfordbury: Roxford Books, 1991). For the full text of the Instrument of Accession (according to India’s claim to its existence), see Exhibit A. If it does exist, major (and substantive) discrepancies in its execution formalities suggest that the instrument is improperly executed and therefore invalid. See, for example, Schofield, *op. cit.*, pp.56-58, 229-230.

³⁷ This is explicit in para. 8 of the Instrument of Accession itself. It also the position repeatedly articulated by India, including at the UN, the entire purported basis of India’s claim at the UN.

³⁸ See Chairman of the United Nations Commission for India and Pakistan, “Letter from the Chairman of the United Nations Commission for India and Pakistan to the Secretary-General of the United Nations introducing the Commission’s 3rd interim report December 9 1949,” December 9, 1949, p.80 (“Declaration of the Belgian Delegation”), <https://digitallibrary.un.org/record/472273?ln=en>.

*India that govern the relations of the State of Jammu and Kashmir with the Union of India will also cease to operate.*³⁹

In light of subsequent history, it is evident that this statement was a prominent example of the subterfuge that the Indian Government has systematically deployed regarding IAJK: claiming to be acting in defense of the rights of its people while actually violating their rights in fundamental and egregious ways. On this purported basis, Article 370 was explicitly included as a “temporary, transitional and special” provision in India’s constitution. Article 370 was also an act of subterfuge and an instrument of illegality.

Article 370 was the product of a political compromise borne of a drawn-out negotiation between a non-representative, Indian-client government in the State of J&K and the Indian Government.⁴⁰ While the substance of Article 370 reflected certain concepts from the Instrument of Accession, including the sovereignty of the State of J&K and the ceding of only limited powers to the Indian government (and parliament) in relation to State of J&K, Article 370 went beyond the terms of the Instrument of Accession. One of the critical ways in which Article 370 extended the Instrument of Accession was by creating a process pursuant to which broader Indian powers and authority could be imposed on the State of J&K if the J&K Constituent Assembly concurred.

Article 370 (or at least its provisions “extending” the Instrument of Accession) is also legally invalid. By its terms, the Instrument of Accession cannot be varied or amended by Indian law “unless such

amendment is accepted by me [i.e., the Maharaja (or his heir or successor)] by Instrument supplementary to this Instrument [i.e., the Instrument of Accession].”⁴¹ “Instrument” means a formally executed, written document that memorializes legally enforceable agreements. While there are no formal written amendments or supplements executed by the parties to the Instrument of Accession or subsequent treaties, there is a proclamation issued by Hari Singh’s son Karan Singh, acting under a proclamation from Hari Singh delegating authority to him (hereafter, the Yuvraj Proclamation), issued on November 25, 1949 accepting the newly drafted Indian constitution (hereafter, the Indian Constitution Proclamation)⁴².

Karan Singh had no more authority than his father to determine the political future of the Princely State or IAJK. To the extent Hari Singh had any authority, he had issued a prior proclamation appointing an Indian-client National Conference government as an interim government “pending the formation of a fully democratic Constitution [in the State of J&K]” which “shall provide adequate safeguards for the minorities and contain appropriate provisions guaranteeing for the freedom of conscience, freedom of speech and freedom of assembly” to “ensure the contentment, happiness and the moral and material advancement of my beloved people.”⁴³ While the Instrument of Accession itself remained conditional on ratification by a democratic referendum, international legal proceedings subsequent to the Instrument of Accession and prior to the Indian Constitution Proclamation (including at the UN Security Council) plainly confirmed that the political future of the Princely State could only be determined by a democratic process. Accordingly, only a proper democratic government in the State of J&K would have legal authority to accept India’s constitution. Karan Singh was not a proper

39 See Chairman of the United Nations Commission for India and Pakistan, “Letter from the Chairman of the United Nations Commission for India and Pakistan to the Secretary-General of the United Nations introducing the Commission’s 3rd interim report December 9 1949,” December 9, 1949, Appendix, para. 38, p.5 (“Admission of Representatives of the State of Jammu and Kashmir to the Constituent Assembly of India”), <https://digitallibrary.un.org/record/472273?ln=en>. The Indian official who made this representation was Sir Girja S. Bajpai.

40 See Noorani, op. cit., pp.50-86.

41 See para. 5 of the Instrument Accession in [Exhibit A](#).

42 For the text of this proclamation, see Noorani, op. cit., p.78.

43 For the text of this proclamation, see *ibid.*, pp.48-49.

democratic government. The Indian Constitution Proclamation is legally invalid as Karan Singh had no legal authority to accept India's constitution on behalf of the State of J&K or its people. If the Indian Constitution Proclamation is invalid then so too are the State of J&K's supposed acceptance of India's Constitution and Article 370. If Article 370 is invalid, then the process pursuant to which Indian powers and authority in excess of those granted in the Instrument of Accession and every action taken pursuant to that process, including the Basic Order, is also legally invalid.

d. Instrument of Accession

Even more fundamentally, the Instrument of Accession is itself legally invalid. Note that this is a point of divergence between British jurisprudence (and, consequently, the UN's jurisprudence—although not formally adopted, Britain's legal positions appear to have been accorded deference at the UN Security Council) and Indian jurisprudence. While both Britain (and the UN) and India agreed that the Princely State was a sovereign state at Partition, India is the only state or other party involved in the disputes over the territories of the Princely State to claim that the Instrument of Accession was valid. While India initially accepted that the Instrument of Accession was conditional on ratification by a democratic referendum (as required by the Instrument of Accession itself), India later denied any such conditionality and has held, manifestly on the international stage since at least 1957, that the Instrument of Accession is final (and not conditional).⁴⁴

⁴⁴ There were earlier proclamations [of annexation] made to this effect. See, e.g., Nehru, Jawaharlal in "Letter dated 48/11/30 from the Chairman of the United Nations Commission for India and Pakistan to the President of the Security Council enclosing a letter dated 48/11/28 from the Representative of India to the Chairman of the Commission," p. 4, Sept. 29, 1948, <https://digitallibrary.un.org/record/473726?ln=en> – "the territory of Jammu and Kashmir, which is now Indian territory." Sir Owen Dixon knew this was the definitive Indian position by no later than September 1950 [see Dixon, Sir Owen, "Letter dated 15 September 1950 from the United Nations Representative for India and Pakistan to the President of the Security Council transmitting his report," Sept. 15, 1950, p.16, <https://digitallibrary.un.org/record/632731?ln=en>]. Famously, on January 23 and 24, 1957, V.K. Krishna Menon, the Indian representative to the UN Security Council, Nehru's right-hand, gave the longest speech ever made at the United Nations, in which he stated, quite clearly: "[T]he Security Council is in no position under the Charter to go into the legality of the accession; and so far as we are concerned it is complete." See S/PV.762, S/PV.763 and S/PV.764 at

The authoritative British legal analysis regarding the validity of the Instrument of Accession was articulated by Sir Gerald Fitzmaurice, an eminent barrister, international legal scholar and judge, as legal advisor to the UK Foreign and Commonwealth Office (whose opinion UK Attorney General, Sir Hartley Shawcross concurred with), in a 1949 legal opinion.⁴⁵ Fitzmaurice determined that the Instrument of Accession, and the Princely State's accession to India, was invalid (actually, null and void) for the following essential reasons:

1. Hari Singh did not have the legal authority to execute the Instrument of Accession because he had already delegated authority over the same subject matter to the Government of Pakistan pursuant to a standstill agreement;⁴⁶
2. Hari Singh did not have the legal capacity to deliver the accession of the Princely State because he did not actually control the territory of the Princely State (the Azad Kashmir government controlled a majority of the territory of the Princely State at the time of the purported execution of the Instrument of Accession); and
3. The Instrument of Accession was conditioned on ratification through a

⁴⁵ "What is the longest speech given at the United Nations?," Dag Hammarskjöld Library, <https://ask.un.org/faq/37127>.

⁴⁶ Lone, Fozia Nazir, "The Legal Validity of Illegal Seizure of Kashmir: An Archival and Legal Review," in *HISTORICAL TITLE, SELF-DETERMINATION AND THE KASHMIR QUESTION* (Leiden: Brill Nijhoff, 2018)]. The specific question considered in the opinion was whether Kashmir's (meaning the Princely State's) accession to India was valid. Fitzmaurice was the Principal Legal Advisor to the UK's Ministry of Economic Warfare (1939–1943), Deputy Legal Advisor to the UK's Foreign and Commonwealth Office (1943–1945), Second Legal Advisor to the UK's Foreign and Commonwealth Office (1945–1953), a member of the UK's delegation to the UN Assembly (1946), the UK's Counsel to the International Court of Justice (1948–1954), Senior Legal Advisor to the Foreign and Commonwealth Office (1953–1960), Member of the UN's International Law Commission (1955–1960) [and Chair of the Eleventh Session of the International Law Commission in 1959], Judge of the International Court of Justice (1960–1967), Member of the Permanent Court of Arbitration (1964–1973), Senior Judge of the International Court of Justice (1967–1973) and Judge of the European Court of Human Rights (1974–1980). The Fitzmaurice opinion was a response to the US Secretary of State's and the UK's UN Security Council's representative's request for advice in connection with the India-Pakistan dispute at the UN Security Council.

⁴⁶ At the time of the Instrument of Accession's purported execution, Pakistan already had authority over these matters for the Princely State and already operated the communications of the Princely State, in each case pursuant to an already in-effect standstill agreement.

democratic referendum, a condition to its effectiveness which was never satisfied.⁴⁷

The work of historians since Fitzmaurice rendered his legal opinion has only buttressed the established, authoritative view that the Instrument of Accession is null and void. There are several other reasons, each dispositive in itself, as to why the Instrument of Accession is void and has no legal effect. Some of the reasons most pertinent for the analysis provided in this report include the following:

- Hari Singh did not have sovereign title to the territory of the Princely State and therefore could not convey it.⁴⁸ The Treaty of Amritsar (1846) was the basis of the Hari Singh's claim to sovereignty (the Princely State, and the Dogra dynasty, were created by the British pursuant to the Treaty of Amritsar; the British colonial Dogra dynasty had no pre-existing claim to rule over the territory). The Treaty of Amritsar was likely null or invalid as a matter of law.⁴⁹ However, if the Treaty of Amritsar was somehow legally valid, it did not empower the Dogra dynasty (who were in a relationship of suzerainty with

the British—essentially, a colonial concessionaire or agency of the British) to enter into international treaties and was in any event invalidated by the Indian Independence Act of 1947 (prior to the execution and delivery of the Instrument of Accession).⁵⁰

- Hari Singh had no legal authority to enter into arrangements that could affect the political future of the people of the Princely State. He was a tyrant responsible for massive human rights violations and grave, systematic and large-scale crimes against the people he ruled, including forced demographic change and ethnic cleansing of Muslims, genocidal killings of Muslims in Jammu (in August–October 1947, known as the Jammu Massacre) and the systematic discrimination against, and political and economic disenfranchisement and disempowerment of, Muslims (a substantial majority of the population).⁵¹ The Dogra dynasty's subjects never consented to their rule and had continually opposed and resisted that rule, suffering massive reprisals and state violence as a consequence. Hari Singh was not considered a legitimate ruler by the majority of the people of the Princely State in October 1947. There were longstanding,

47 Plebiscites or popular referenda were standard British policy in decolonization processes and was the policy in British India in a contested case. This was India's policy as well, as explicitly references in the terms of India's acceptance of the Instrument of Accession itself ("Consistently with their policy that in the case of any State where the issue of accession has been the subject of dispute, the question if accession should be decided in accordance with the wishes of the people of the State, it is my Government's wish that as soon as law and order have been restored in Kashmir and her soil cleared of the invader the question of the State's accession should be settled by a reference to the people.") Note also that, among many other statements and public commitments, the official White Paper issued by the Indian government in 1948 on this subject stated: "In accepting the accession, the Government of India made it clear that they would regard it as purely provisional until such time as the will of the people of the State could be ascertained." See Noorani, op. cit., pp.44-45.

48 Note that, as explained above, the Instrument of Accession did not even purport to convey sovereign title.

49 It is unclear what legal authority the parties had to enter into the instrument, which purported to convey territory nominally "acquired" by colonial conquest and not under the control of the conveying party and to which neither party appeared to have had a legally recognizable claim. Further, this instrument was extraordinary in its vileness and contravention of legal norms. Effectively, many historians and scholars concur that the Treaty of Amritsar was a "sale deed" pursuant to which vast territory, massive resources and various indigenous peoples were purportedly "conveyed" for minimal consideration, which was intended by the British as indemnification for its military expenditures to extend its colonial domination in the region. The result of this "sale deed" was a two-year war of consolidation in which the Dogra forces committed gross violation and atrocities (pursuant to "authority" granted to them by the British)—resulting in a tyrannical regime widely recognized (including by the British) for its brutality, state violence, political repression, anti-Muslim bigotry and discrimination and severe economic exploitation. Note that the economic violations, at least, were committed in part to pay the British Crown consideration and tribute "owed" pursuant to the Treaty of Amritsar.

50 Pursuant to Section 7(1)(b) of the Act, "the suzerainty of His Majesty over the Indian States lapses, and with it, all treaties and agreements in force at the date of the passing of this Act between His Majesty and the rulers of Indian States, all functions exercisable by His Majesty at that date with respect to Indian States, all obligations of His Majesty existing at that date towards Indian States or the rulers thereof, and all powers, rights, authority or jurisdiction exercisable by His Majesty at that date in or in relation to Indian States by treaty, grant, usage, sufferance or otherwise." This provision is traditionally understood to have "returned" sovereignty to the so-called Princely States (the "Indian States" in the statutory text). However, unlike other "princely states," the Princely State did not pre-exist the British (it was created by them pursuant to the Treaty of Amritsar). Instead of "returning" sovereignty to the Dogra dynasty, the Indian Independence Act terminated the Treaty of Amritsar (if it was ever valid). The Cabinet Mission Memorandum (May 12, 1946), another key legal mechanism for the implementation of the decolonization of British India, similarly provides for the lapse of "paramountcy," or British suzerainty, at Partition, with all rights "surrendered" by the Princely States "returned" to them. Again, in the case of the Princely State, there was nothing "surrendered" or "returned."

51 On the Jammu Massacre of August to October, 1947, which involved the killing of an estimated 250,000 local Muslims (according to contemporary estimates) and the displacement of approximately 500,000 local Muslims, now denied their right of return, see, for example, Naqvi, Saeed, "The Killing Fields of Jammu: How Muslims Become a Minority in the Region," Scroll.in, July 10, 2016, <https://scroll.in/article/811468/the-killing-fields-of-jammu-when-it-was-muslims-who-were-eliminated>, "circa 1947: A Long Story," Kashmir Life, November 5, 2014, <https://kashmirlife.net/circa-1947-a-long-story-67652/>, and Fareed, Rifat, "The forgotten massacre that ignited the Kashmir dispute," Al Jazeera, November 6, 2017, <https://www.aljazeera.com/news/2017/11/forgotten-massacre-ignited-kashmir-dispute-171106144526930.html>. See also footnote 86 of this report.

widespread, open, popular calls for his ouster and demands for democratic self-governance. In August-October 1947, an indigenous, anti-colonial, pro-democracy uprising against Hari Singh's government (in response to Hari Singh's army's genocidal killings and ethnic cleansing campaign targeting Muslims) had successfully driven back Hari Singh's troops, taken control of a majority of the territory of the Princely State, achieved effective control over that territory, declared a new, independent state (the Azad Kashmir government) and forced Hari Singh from his claimed capital, at which point he lost any possible claim to rule.

- The Instrument of Accession is an “unequal treaty” and therefore null and void. Hari Singh had sought to remain independent after Partition. He signed the Instrument of Accession due to Indian manipulation (while not comprehensive of these extensive facts, see the discussion in Section IV below regarding Mehr Chand Mahajan's role in the purported accession of the Princely State to India) and coercion—India refused to provide military support to prop up or re-establish Hari Singh's failed autocracy unless he first signed the Instrument of Accession. India, a superior and larger power, had engaged in a campaign of intimidation and manipulation prior to the execution of the Instrument of Accession. Hari Singh was directly pressured by Indian representatives even at the time of the apparent execution of the Instrument. The Instrument of Accession is an “unequal treaty” (a treaty imposed wholly or partly by a powerful state on a weaker state, enabling the powerful state to dictate terms to the weaker state). Unequal treaties are null and void as a matter of law.
- Hari Singh had no valid claim to “self-defense” and therefore some justification

that would tend to validate the Instrument of Accession. In the offer of the Instrument of Accession, Hari Singh makes a false claim that “Afridis, soldiers in plain clothes and desperadoes with modern weapons have been allowed to infiltrate into the State at first in Poonch...[T]he people of my State both the Muslims and non-Muslims generally have taken no part at all.” In fact, there was an indigenous, anti-colonial, pro-democracy armed uprising against his rule (the armed rebels were part of a longstanding indigenous, anti-colonial, pro-democracy struggle against his rule and not foreign “infiltrators”) headquartered in Poonch that had defeated his troops and controlled a majority of the Princely State's territory. The closest things to “infiltrators” were in fact informal groups from the borderlands of the Princely State who were longstanding allies of the indigenous forces already fighting (and defeating) Hari Singh's troops, while Hari Singh's troops were committing atrocity crimes against the people of the Princely State. Note in this regard that international law recognizes the right of people resisting colonial domination in pursuit of the exercise of their right to self-determination to seek and to receive support. Even if one accepts Hari Singh's position regarding “infiltration,” there was no “armed attack” from another state (e.g., the Pakistani military did not attack the Princely State). As the discussion in Section IV below regarding Mehr Chand Mahajan's role in the purported accession of the Princely State to India elucidates, India's military intervention in the Princely State was pre-meditated and India's claim of “infiltration” pre-textual. The purported justification for the Instrument of Accession offered by Hari Singh's government and India's government is false.

- India's course of conduct, including its insistence on a plebiscite (even if

conducted without appropriate process) to validate its invasion and seizure of the State of Junagadh in contravention of its ruler's accession to Pakistan, legally estopped (or prevented) India from maintaining a contrary position in the case of the Princely State.

In sum, the Supreme Court's assertion of jurisdiction over the State of J&K is extralegal and, as an act that makes occupation permanent, an illegal act of annexation under international law. While the Supreme Court's conduct is itself illegal, it is also built on several other illegalities and/or legally invalid predicates. These predicates were known to be invalid at the time of the Supreme Court's assertion of jurisdiction, both generally and by the Supreme Court specifically. In fact, no independent legal analysis would have been required to establish this. The UN Security Council, an authoritative body for these purposes under international law and the body to which India itself appealed its case, had already clearly (and repeatedly) made its position clear on at least two fundamental premises: 1) the ineffectiveness of the Instrument of Accession to give India sovereign title over the Princely State and IAJK and 2) the legal incompetence of the J&K Constituent Assembly and the invalidity of its acts.

By exercising jurisdiction over IAJK, the Supreme Court committed an illegal act of annexation and violated various fundamental rights of the people of IAJK, including their right to self-determination. This profound failure to uphold the rule of law is a fundamental contravention of the Supreme Court's mandate. The failure to uphold the right of self-determination of the people of IAJK has denied them the substantive realization of all other human rights and fundamental freedoms.⁵² This violation is

⁵² See, e.g., "Self-determination," Unrepresented Nations & Peoples Organization, September 21, 2017, <https://unpo.org/article/4957> and "CCPR General Comment No. 12: Article 1 [The right to self-determination], The Right to Self-determination of Peoples," Office of the High Commissioner for Human Rights, March 13, 1984, para. 1, <https://www.refworld.org/docid/453883f822.html>; "The right of self-determination is of

fundamental and formative in the establishment of the Supreme Court and in the relationship between India and IAJK and its people. Further, the application of law to IAJK by Indian-client government and pursuant to Article 370 is illegal and invalid despite legalization under Indian law by the Supreme Court. This is true because the necessary legal foundations of such application of law are themselves illegal and invalid and also generally true under international humanitarian law (which obligates occupying powers, subject to narrow exceptions, to respect the laws in force in occupied territory).

particular importance because its realization is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights."

IV. Sage, Savior, Inside Man: MC Mahajan and India's Criminal Course of Conduct in IAJK

To elucidate the purpose of the Supreme Court in exercising jurisdiction over IAJK and to illustrate (in exemplary fashion) the contributions of eminent Indian lawyers in the violations discussed in this report, consider the various critical roles in the foregoing events of Mehr Chand Mahajan, an eminent barrister, jurist and judge. Note that the Mahajan-related analysis presented here draws heavily from Mahajan's 1963 self-congratulatory autobiography, written soon after the pertinent key events and while their ramifications remained a subject of public controversy.⁵³ Accordingly, this analysis, based on content curated to produce a self-promoting narrative, is, in evidentiary terms, akin to an admission against interest but, in historical terms, unlikely to be sufficiently critical of Mahajan.

Mahajan established himself as a lawyer in Gurdaspur District, Punjab, then at Lahore, where he served as the president of the Lahore High Court Bar Association (1938–1943). He became a justice of the Punjab High Court (the apex court in pre-Partition Punjab), a justice of the inaugural (post-Partition) Supreme Court (appointed September 18, 1948)⁵⁴ and the Chief Justice of India (its third, from January 4, 1954 until aging out on December 22, 1954). Mahajan was a justice of India's apex court during the negotiation of Article 370, upon the effectiveness of the Indian constitution (and the effectiveness of Article 370) and when the original order pursuant to Article 370 was issued.⁵⁵ He was the Chief Justice of the Supreme Court when the Basic Order was issued. He is credited, as the main Congress representative to the Radcliffe

Boundary Commission, for delivering to India the key Muslim-majority district of Gurdaspur (which, among other things, gave India its only potential land route to the territory of the Princely State).⁵⁶ He is also credited, as the Prime Minister of the British colonial Dogra dynasty in October 1947, with delivering the Instrument of Accession, and the accession of the Princely State, *on behalf of the Princely State* to India.

Certain of Mahajan's formative markers of identity are critical to his telling of his life story and his perspective on issues regarding the Princely State. He thought of himself as an "orthodox Hindu of the old style" who became "a zealous Arya Samajist."⁵⁷ He embraced, defended and promoted the interests of his *mahajan* caste, an upper-caste Hindu, moneylender caste.⁵⁸ Consistent with these markers of religious and caste identity, Mahajan was anti-Muslim (this is evident through his description both of events and of people),⁵⁹ Hindu supremacist and Hindu nationalist (for example, he adamantly argued against India's federal constitution and for a new "unitary system of Government" in India justified by the "unity of culture and ideas amongst the people" in "Bharat"),⁶⁰ anti-democratic (he held an authoritarian view of political authority and was deeply skeptical of

53 See, generally, Mahajan, Mehr Chand, *Looking Back: The Autobiography of Mehr Chand Mahajan Former Chief Justice of India* (Bombay: Asia Publishing House, 1963).

54 Mahajan's appointment was to the apex Federal Court of India which became the Supreme Court upon the effectiveness of the Indian constitution on January 26, 1950. See *ibid.*, p.194.

55 The Constitution [Application to Jammu and Kashmir] Order, 1950, which was superseded by the Basic Order.

56 Mahajan himself was acutely aware of this. See Mahajan, *op. cit.*, p.116.

57 *Ibid.*, p.15.

58 He actively worked to promote the interests of the mahajan caste, including by advocating for Mahajan clients and through participation and leadership in an organization that represented the Mahajan caste's interests. See *ibid.*, pp.53-55.

59 This bias is pervasive in Mahajan's ideas, historical narrative and diction. See, for example, the bigotry displayed in his description of the defendants in what otherwise appears to be a common land use dispute ("an act of aggress on the part of Muslim fanatics") and his patently false description of the ethnic cleansing and genocidal killings of Muslims in Jammu August–October 1947 conducted by Hindus and Sikhs in concert with Princely State troops ("communal trouble but not of a very serious character...started by the local Muslims...they looted the Hindu and Sikh houses, abducted their women and killed a number of people" with the Hindus and Sikhs only killing "in retaliation"), *ibid.*, pp. 47-48, 143. On the ethnic cleansing and genocidal killings of Muslims in Jammu August–October 1947, known as the Jammu Massacre, see footnotes 51 and 86 of this report.

60 By "unitary system" he meant "one Parliament for India, one Ministry in the Centre and abolition of all State Legislatures and State Ministries." See Mahajan, *op. cit.*, pp. 226-229, 237-248.

popular will)⁶¹ and classist (in favor of the economically privileged classes).

Mahajan had extensive exposure to, and vested interests in, the Princely State prior to being appointed the British colonial Dogra dynasty's Prime Minister. His clients and associates included the economically dominant *mahajan* families of the Mirpur, Rajouri, Udhampur, Kotli and Jammu districts of the Princely State.⁶² He married the daughter of the *tehsildar* (the chief revenue officer) of Mirpur (a powerful functionary of the Dogra dynasty), who was a prominent *mahajan*.⁶³ He served as counsel to Tara Devi, the wife of Hari Singh (both she and Mahajan were from Kangra District, Punjab), and other members of the Dogra ruling family.⁶⁴ He had made several trips to the Princely State, including to perform the Amarnath Yatra, a highly political act of Hindu religious piety.⁶⁵ The population of the Princely State (throughout, including in pre-Partition Jammu) was predominantly Muslim, agrarian, poor, subjugated, exploited and oppressed by the interests Mahajan identified with, defended and represented.⁶⁶ In a vivid example of Mahajan's perspective on Kashmiris, he notes a "peculiar characteristic" of Kashmiris (at least those who were subordinate and therefore, in context, necessarily Muslim)—that one had to deal with them "firmly," by which he means physically assault them, so that "they were prepared to obey."⁶⁷

Mahajan was also a near-lifelong partisan, activist and functionary of the Congress.⁶⁸ The Congress, an Indian nationalist party, had a

critical role in the pre-Partition Princely State. Popular politics in the Princely State prior to Partition was oriented towards ending anti-Muslim discrimination, increasing educational and representational opportunities for the disenfranchised, disempowered and exploited Muslim population, implementing democratic political reforms and ending the autocratic British colonial Dogra dynasty's rule. The Dogra regime was Hindu supremacist and tyrannical. It legalized discrimination against, violently exploited and repressed and committed systematic, widespread atrocities against the predominantly Muslim population. In the immediate aftermath of a series of mass killings of Muslims and large-scale civil disobedience, the Muslims of the Princely State were (after decades of organized resistance and civil disobedience in the face of violent state repression and reprisals) permitted by the Dogra state to create a formal political party (along the lines of existing Hindu and Sikh parties) in October 1932, the Muslim Conference.⁶⁹

Sheikh Abdullah, one of the youth leaders of the Muslim Conference, was recruited by Jawaharlal Nehru beginning in at least 1935 to create an alliance with the Congress, which Abdullah announced in 1937.⁷⁰ In 1938-39, Abdullah led an insurgency within the Muslim Conference that coercively displaced its senior leadership, assumed control of the party and re-branded the party (as the National Conference). He then announced a formal alliance with the Congress in direct contravention of the commitment made by all members of the Muslim Conference, including Abdullah, to keep the freedom movement in the Princely State away from the influence of organizations outside of the Princely State.⁷¹ In addition to Abdullah, the Congress importantly had another functionary in a critical role in the Princely State at this time—

61 For example, Mahajan objected to adult franchise "because with a mass of illiterate people such a course had no meaning," *ibid.*, p.167.

62 *Ibid.*, pp.54-55.

63 *Ibid.*, p.67.

64 *Ibid.*, pp.95, 101.

65 *Ibid.*, pp.72, 91.

66 Including the economically dominant *mahajan* families in Mirpur, Rajouri, Udhampur, Kotli and Jammu. *Ibid.*, pp.54-55.

67 *Ibid.*, p.91.

68 This included leadership roles in Congress during Mahajan's formative days as a lawyer in Gurdaspur. See *ibid.*, p.46.

69 See, for example, Fazili, Manzoor, *Socialist Ideas and Movements in Kashmir* (New Delhi: Eureka Publications, 1980), p.46.

70 Abdullah, Sheikh, *Flames of the Chinar* [trans. Khushwant Singh] (New Delhi: Penguin Books, 1993), p. 46.

71 See, for example, Fazili, *op. cit.*, pp.63-87.

Gopalaswamy Ayyanger, who was in political control of the State as the British colonial Dogra dynasty's Prime Minister.⁷² What is critical to understand from this is that the Congress, through its agents in the Princely State's government and in the state-aligned segment of the political opposition (i.e., the National Conference), played a critical role in persecuting and marginalizing the dominant pro-democracy party, the Muslim Conference, and its supporters. That work was both done through the government of the Princely State itself as well as through the propping up of the National Conference and its soon-to-be vehemently anti-Muslim Conference leader, Sheikh Abdullah.

The Congress appointed Mahajan to serve as its leading representative at the Radcliffe Boundary Commission, the body established in July 1947 to partition Punjab between the to-be-created states of India and Pakistan. This commission was a manipulated, political (in the worst sense) body that was given a "judicial facade" to provide it legitimacy.⁷³ Its commissioners, including Mahajan, were "political nominees...following their party lines." Critically, Mahajan served on the commission after he had been invited (in May 1947) by Tara Devi, Hari Singh's wife, to become the Prime Minister of the Princely State.⁷⁴ Mahajan was acutely aware that "if the district of Gurdaspur fell in Pakistan, there would be no road left connecting Kashmir with India."⁷⁵ India needed to control Gurdaspur in order to be able to control the territory of the Princely State. Mahajan argued for the Ravi River to be the boundary between India and Pakistan so that, among other things, Lahore

would be given to India.⁷⁶ On behalf of the Congress and India, after being asked by representatives of the Dogra dynasty to become Prime Minister of the Princely State, Mahajan "saved a part of Gurdaspur district for India" through his work on the Radcliffe Boundary Commission.⁷⁷

One week after announcement of the Radcliffe Boundary award (on August 17, 1947), Mahajan received an invitation (again, from Tara Devi) to "interview" with Hari Singh for the position of Prime Minister of the Princely State.⁷⁸ In the midst of the ethnic cleansing and genocidal killing of Muslims by Hari Singh's troops (which Mahajan omits entirely from his autobiography), Mahajan travelled by military escort (staying at military camps) to Srinagar on September 10, 1947.

He went to Delhi around September 19, 1947 where he met Sardar Baldev Singh, India's Defense Minister, Sardar Patel, India's Home Minister, Jawaharlal Nehru, India's Prime Minister, and Mahatma Gandhi. Patel "not only encouraged but practically ordered" Mahajan to accept the role of Prime Minister of the Princely State. Patel instructed Mahajan to "proceed to Srinagar" as it was "in the interest of India in the circumstances that had arisen."⁷⁹ Mahajan told Nehru (over a month before the Instrument of Accession was purportedly signed, which was purportedly signed to obtain "emergency" military assistance) that the "Maharaja was willing to accede to India" and conveyed "the terms on which the Maharaja wanted me to negotiate with India."⁸⁰ Mahajan then went to Amritsar until Sardar Patel ordered him on October 10, 1947 to proceed to Srinagar "at once." Patel ordered Mahajan to fly from Amritsar to Delhi with Lady Mountbatten on the morning of

72 See footnote 34 of this report.

73 Chester, Lucy P., *Borders and Conflict in South Asia* (Manchester: Manchester University Press, 2019), pp.70, 110. Chester provides a thorough and critical account of the commission and its work. Chester describes some of the irregularities and manipulation, including by Lord Mountbatten (pp. 112-125). Even some of the commissioners believed from the get-go that the commission's results were predetermined and that the commission was itself a farce.

74 According to Mahajan, this occurred in May 1947. See Mahajan, op. cit., p. 113.

75 Ibid., p.116. This awareness contradicts Chester's analysis, but it appears that Chester pays insufficient consideration to the depth of the motivations of various actors, including Mahajan, and the depth of the intrigue around the Princely State. Note that Gurdaspur was where Mahajan had first established himself as a lawyer – he was an expert with longstanding personal experience in that locality.

76 Ibid., pp.115-116.

77 Ibid., p. 110. This is approvingly quoted by Mahajan from an article from a leading daily celebrating his appointment as Chief Justice of India.

78 Ibid., p.123.

79 Ibid., p.126.

80 Ibid.

October 11, 1947.⁸¹ Patel handled all of the necessary administrative formalities on Mahajan's behalf. In Delhi, Mahajan met Patel, Nehru, Gandhi, Lord Mountbatten, and, at Mountbatten's request, V.P. Menon and the Hindu supremacist icon Shyama Prasad Mukherjee.⁸² Mountbatten told Mahajan that "he would be very happy if I advised the Maharaja to accede to India." Menon and Mukherjee instructed Mahajan to "bring about the accession of the State to India anyhow."⁸³ Acting as Prime Minister of the Princely State, Mahajan was an Indian agent and, in particular, acting on the orders of, and at the behest of, Sardar Patel.

Mahajan was officially named the Princely State's Prime Minister on October 15, 1947. Contrary to established fact (including those established by Mahajan himself), Mahajan publicly claimed to serve the people of the Princely State, to only take decisions regarding the Princely State with the consent of the people's representatives and to have an "open mind on the subject" of accession.⁸⁴ In fact, he continued Hari Singh's brutal repression of the people's representatives (all political opposition leaders were imprisoned, with many Muslim Conference leaders on death row). He willfully ignored popular sentiments in the Princely State against Hari Singh's

regime and its longstanding repression while falsely claiming that Hari Singh's subjects loved him and were "genuinely loyal" to him. He refused to meet or work with Pakistani representatives (despite repeated overtures) while falsely claiming that "a tribal raid was being organised by the Pakistan Government" (because a "friend...told me secretly all about it"). He actively collaborated with India on the matter of the Princely State's accession while falsely claiming that India "had no designs on Kashmir" and that "surprise raids from the Pakistani side of the border" forced him to ask India for help "to save the State from Pakistan's unprovoked aggression."⁸⁵ He participated in the ethnic cleansing and genocidal killing of Jammu's Muslims while falsely claiming to oppose communalism (he went so far as to falsely blame the victims of atrocity crimes (the "local Muslims") and made-for-propaganda bad guys ("Pakistani raiders") for the "communal trouble").⁸⁶ Mahajan was a propagandist who exploited supposition, disinformation and bigotry from a position of power and privilege to effectuate illegal results with impunity.

Mahajan provided a detailed account of his role in the Princely State's purported accession to India. As Victoria Schofield and others have pointed out, Mahajan was not reliable in his recollection of the facts and circumstances.⁸⁷ He appears motivated to provide a factual account that buttressed India's preferred legal-political posture on accession: that of legal accession to India before Indian intervention. He went so far as to claim to have practically forced (again, nominally acting as the official representative of the people of the Princely State although an agent of the Indian government) the accession of the Princely State onto the Indian government.⁸⁸ What is quite clear is that Mahajan, the prime minister of a purported sovereign to whom he claimed

⁸¹ Ibid., p.127.

⁸² Ibid. Note that V.P. Menon was also sent by Mountbatten to (improperly) influence Cyril Radcliffe in the final days prior to his issuance of the Radcliffe Boundary Commission "award". See Chester, *BORDERS AND CONFLICT IN SOUTH ASIA*, pp. 119-120.

⁸³ Ibid., p.128. Note that Mukherjee was the formative Hindu supremacist ideologue on the territory of the Princely State. Through the Bharatiya Jana Sangh, the predecessor to the current-day BJP, he articulated (by the early 1950s) the now-orthodox view in India that "Jammu and Kashmir is an integral part of India and that economic and social advance of the state requires its integration with India," that the autonomy of the State of J&K was a "clear violation of India's sovereignty" and called for the "complete integration" of the State of J&K with India. India's August 2019 parliamentary (and related) moves against the State of J&K and its people were celebrated in India as "realizing the dreams of Shyama Prasad Mukherjee." See, for example, the articles available at the following links: https://www.business-standard.com/article/current-affairs/how-modi-fulfilled-rss-dream-of-kashmir-s-integration-119080501139_1.html, <https://www.thehindu.com/news/national/article-370-martyrdom-of-dr-mukherjee-for-complete-integration-of-jk-honoured-says-ram-madhav/article28820818.ece>, <https://www.indiatoday.in/india/story/ek-desk-mein-do-vidhan-nahi-chaleinge-bjp-realises-founder-shyama-prasad-mukherjee-dream-1577345-2019-08-05>, <https://zeenews.india.com/india/dream-of-akhand-bharat-fulfilled-partially-with-article-370-abrogation-shiv-sena-lauds-modi-amit-shah-2225094.html>, <https://swarajyamag.com/magazine/know-your-kashmir-land-of-goddess-saraswati-ancient-seat-of-indic-scholars> and <https://www.crosstownnews.in/post/65586/modern-jammu-a-kashmir-is-because-of-dreams-and-vision-of-shyama-prasad-mukherjee-vibodh.html>.

⁸⁴ Mahajan, op. cit., pp.133-138.

⁸⁵ Mahajan, op. cit., pp.131-132, 146-150.

⁸⁶ Ibid., pp.130-145. On Mahajan's government and Mahajan's personal role in the Jammu Massacre, see <https://kashmirilife.net/circa-1947-a-long-story-67652/>.

⁸⁷ Schofield, op. cit., pp.54-60.

⁸⁸ Mahajan, op. cit., pp. 150-159.

loyalty, viewed Hari Singh's apparent desire for an independent Kashmir as "sheer sentimentalism," "not practical" and "wholly unrealistic." By his own account, rather than acting to effectuate the desired policy outcomes of the sovereign for whom he was a servant, he acted in close concert with V.P. Menon, the Secretary to Sardar Patel's Ministry of States, to secure and effectuate the accession of the Princely State to India that he was unofficially deputized by India's leaders (and Sardar Patel in particular) to secure.⁸⁹ In his role of Prime Minister, he purported to negotiate the accession of a sovereign and independent state, Jammu and Kashmir, across from the man who ordered him into that role on India's behalf and for whom he was acting as agent, Sardar Patel.

Mahajan played a key role in the Indian-Pakistani dispute over the territory of the Princely State, both before and after India took that dispute to the UN Security Council. Regarding the plebiscite to determine the future political status of the territory of the Princely State that India unequivocally committed to, including at the UN, Mahajan variously and falsely claimed that he thought a plebiscite did not mean "popular voting," that a plebiscite "had no meaning" after the Princely State's purported accession (which was then "complete and conclusive") and that India's agreement to a plebiscite was conditioned on the fulfilment of "certain conditions...within a certain time limit."⁹⁰ He also noted that "Sardar Patel thought that a plebiscite would never be held."⁹¹ Mahajan proactively sought to influence public understanding regarding the accession of the Princely State to India, even after he was Chief Justice of the Supreme Court. He published a series of articles as well as a brochure used by the Indian government to influence Indian public opinion as well as the UN Security Council and the international press. He took

credit for Krishna Menon's famous speech on the political status of Jammu and Kashmir at the UN Security Council in 1957, in which Menon justified India's illegal annexation and colonization of IAJK.⁹² He enjoyed a position of tremendous influence over India's treatment of the State of J&K and the rights of its people, and he exercised that influence to achieve and legitimate illegalities.

Mahajan used his uniquely powerful and authoritative position, as a pre-eminent lawyer, judge and political actor, to argue against the rule of law, for India's violating international law regarding the State of J&K and for Indian impunity in respect thereof. He argued that the UN Security Council lacked jurisdiction over the question of the Princely State's accession and therefore acted extralegally. For Mahajan, this rendered all of the relevant UN Security Council resolutions "void and inoperative."⁹³ He went so far as to publicly accuse "the States that hold supremacy in the Council" of "an act of usurpation of someone else's power."⁹⁴ His basic argument in support of this position was that the only relevant legal authority is the Indian Independence Act. Under that Act, the ruler of a Princely State (or his government) had exclusive authority to determine questions of accession, so anything mandated by the UN Security Council or agreed by India at the UN Security Council (e.g., holding a plebiscite to determine the political future of the Princely State) was beyond the authority granted by that Act and therefore void.

There are many reasons why Mahajan's argument is extremely problematic both in its foundations and implications.⁹⁵ But the basic

⁸⁹ Ibid.

⁹⁰ Ibid., pp.167-172.

⁹¹ Ibid., p.171.

⁹² Ibid., p.231. See also footnote 44 of this report.

⁹³ Note that this is an interesting inversion of the reality of the Supreme Court's lack of jurisdiction over IAJK and extralegal assertion of jurisdiction. "The question of accession of the State was outside the charter of the Security Council and it had no jurisdiction to entertain it at the instance either of India or Pakistan, as under the Act of Independence it was only within the competency of the Rule of the State or of the Government that was established under his authority and of which he was head." Ibid., pp.278, 281.

⁹⁴ Ibid., p.279.

⁹⁵ The myriad problems with this line of argumentation include various problems relating to the validity, application and sufficiency of the Act itself as well as the validity of the Instrument of Accession (at least nominally) pursuant to it. See the above

concepts that India can freely and unilaterally repudiate and invalidate its own international commitments (properly made before an authoritative international body) and that the UN Security Council does not have jurisdiction over matters squarely within its mandate brought to it by India itself invoking that mandate is difficult to understand if one assumes a commitment to the rule of law and/or good faith. The absurdity of this is heightened by Mahajan's simultaneous flattery of the UN Security Council, calling it "the court of nations" and the "Tribunal of Nations."⁹⁶ This is gratuitous and public subterfuge through bad faith, quasi-legal argumentation. Mahajan, consistent with a longstanding Indian pattern and practice regarding IAJK, claimed respect for and compliance with the rule of law while actively promoting its violation.

In various ways, then, the formative relationship between the Supreme Court and IAJK and India's legal authorities, here exemplified by Mehr Chand Mahajan, is premised on, and demonstrative of, law as naked, cynical artifice promoting gross violations and the misrule of law. The above discussion relates only to the foundations of the relationship of the Supreme Court to IAJK. While sufficiently damning in itself, this is only the beginning of a broader course of illegal (and ongoing) conduct. The subsequent conduct of the Supreme Court furthered and deepened these formative violations. The next Section describes a series of specific episodes and developments in that regards.

The foregoing legal-historical analysis has various profound and damning implications. In the context of this report, three of these implications warrant specific mention.

First, India's, and the Supreme Court's, assertion of authority over the Princely State

or IAJK is rife with manipulated representation of a subject population through egregious self-dealing. This is very evident in the roles of Mehr Chand Mahajan, the history of the Princely State's purported accession, the process of negotiating Article 370 and the process of imposing the Indian constitutional orders through which that authority was nominally established and legalized. Mahajan was an Indian agent acting at the behest of Sardar Patel (while nominally representing the people of the Princely State as "their" prime minister) and Sheikh Abdullah was an Indian agent acting at the best of Jawaharlal Nehru (while nominally acting as "their" popular leader). Abdullah's role in India's cynical political-legal project is critical—he was the essential prop and actor in manufacturing the appearance of a popular and democratic mandate from the people of the Princely State for accession to India.

One way to clearly see the import of Abdullah's role is through India's propagandistic campaign at the UN Security Council. As Mahajan noted, he was pressured to vacate the prime ministership of the State of J&K at the end of February 1948 by Jawaharlal Nehru (India's Prime Minister), Sir Girja S. Bajpai (India's Minister of External Affairs and a leading Indian representative at the UN Security Council) and N. Gopalaswami Ayyangar (the British colonial Dogra dynasty's Prime Minister of Jammu and Kashmir (1937-1943), India's minister (without portfolio) in charge of Kashmir affairs and the other leading Indian representative at the UN Security Council) in order to make room for Abdullah to "strengthen the hands of India in the Security Council where the matter of accession of Kashmir was pending."⁹⁷ Hari Singh issued a proclamation appointing Abdullah prime minister on March 5, 1948 (hereafter, the Interim Government Proclamation).⁹⁸ Abdullah, who had long been desperate for the appointment, happily

discussion regarding both the Indian Independence Act and the Instrument of Accession, including Section III(d) (Instrument of Accession) as well as footnotes 36 and 50 of this report.

⁹⁶ Mahajan, op. cit., pp.273, 276.

⁹⁷ Ibid., p.171.

⁹⁸ For the text of this proclamation, see Noorani, op. cit., pp.47-49.

accepted. Mahajan, who is generally at pains to exhibit his loathing for Sheikh Abdullah, nonetheless notes that he “always felt grateful to Sheikh Abdullah” for his “help at a most crucial time.”⁹⁹

Second, the international community, including the UN and the UN Security Council, have been directly and actively involved in India’s violations in IAJK from the outset. These institutions have not promoted human rights, accountability and the rule of law in IAJK. Instead, they have aided and abetted India’s violations. Whether that was initially, at least partly, the result of inadequate information (which, given their privileged and self-conceived authoritative role, is itself problematic), it is clear that little to nothing was done to promote accountability or the rule of law, despite acute awareness by UN representatives of the violations that were occurring. The last attempt to promote some public accountability for India’s violations in IAJK was UN Security Council Resolution 122 of January 24, 1957 (which reaffirmed Resolution 91 and declared the convening of the J&K Constituent Assembly and any action that assembly may have taken or might attempt to take inconsistent with the people’s right to self-determination). But even these measures were never true accountability measures. India’s violations were never publicly condemned or directly confronted or addressed. Rather than protecting the vulnerable, the international community has shown deference to occupation, annexation, colonization, human rights violations and atrocity crimes in IAJK. Rather than force accountability for the violated, the international community has normalized and legitimated the violator.

Of particular note is the role of the United Kingdom, the state directly responsible for creating the Princely State, for empowering the Dogra dynasty and keeping them in power in the Princely State, for the failure to de-

colonize and implement a democratic transition in the Princely State in 1947 and for all of the state’s (first the Dogra dynasty’s and later the Indian government’s) violations in the Princely State since 1846. Instead of facilitating a process of self-determination in the Princely State in accordance with international law and its own commitments, the United Kingdom attempted to disclaim any responsibility while continuing to act as an authority on the affairs of the Princely State and an arbiter of, and international leader on, issues involving the Princely State, including at the UN Security Council.

The foregoing implications are predicated on a third implication that is evident throughout—the necessity of silencing and marginalizing the people of the Princely State. The Indian government, local agents empowered by the Indian government and the international community have all participated in this erasure, which has enabled the violations against the people of the Princely State, obscured the reality of those violations and allowed each of those groups to (shamelessly) claim commitment to, while actually flagrantly violating, the rule of law, democracy and human rights in IAJK.

⁹⁹ Mahajan, *op. cit.*, p.277.

“The question of accession of the State was outside the charter of the Security Council and it had no jurisdiction to entertain it at the instance either of India or Pakistan.... It is an act of usurpation of someone else’s power by the members of the States that hold supremacy in the Council.”

— MC Mahajan, *eminent Indian jurist, Arya Samajist, Congress worker, British colonial Dogra dynasty Prime Minister of Jammu & Kashmir and Chief Justice of India (d. 1967)*



The Many Roles of MC Mahajan

<i>Pre-1947</i>	<i>Lawyer, President of Lahore High Court Bar Association (1938–1943), High Court Justice</i> Advocated for the British colonial Dogra dynasty and upper-caste Hindu families (and their interests) in the Princely State.
<i>May 1947</i>	<i>Leading candidate for Prime Minister of the Princely State</i> Invited by the Dogra dynasty to be the Prime Minister of the Princely State.
<i>July 1947</i>	<i>Indian National Congress representative to the Radcliffe Boundary Commission</i> Credited with delivering the Muslim-majority Gurdaspur District in Punjab to India, ensuring India had road access (and the basis for a military supply line) to the Princely State (NB: decision announced August 17, 1947).
<i>August 1947– October 14, 1947</i>	<i>Prime Minister-in-waiting of the Princely State</i> Took Dogra military escort to Srinagar for early September talks with Hari Singh in the midst of genocidal killings and ethnic cleansing of Muslims by that military; traveled to Delhi for late September talks with India’s Prime Minister (Jawaharlal Nehru), Home Minister (Sardar Patel) and Defense Minister where Patel ordered him to immediately take office as Prime Minister of the Princely State in the interest of India and he told Nehru that Hari Singh was willing to accede the Princely State to India, setting out Singh’s terms; in early October, ordered by Patel to immediately go to Srinagar via Delhi (Patel made all arrangements for Mahajan); returned to Delhi for talks with Patel, Nehru, India’s Governor-General (Lord Mountbatten), Patels’ secretary (V.P. Menon) and the leading Hindutva activist and the leading advocate for India’s annexation and “integration” of the Princely State (Shyama Prasad Mukherjee), where Patel ordered him to Srinagar, Mountbatten said “he would be very happy” if Mahajan advised Hari Singh to accede the Princely State to India and Mukherjee instructed Mahajan to find a way to make the Princely State accede to India.
<i>October 15, 1947– March 5, 1948</i>	<i>Prime Minister of the Princely State</i> Continued the Hari Singh regime’s brutal repression of pro-democracy activists while promoting disinformation regarding Hari Singh’s liberalism and local support; refused to meet Pakistani representatives while promoting disinformation regarding Pakistani conspiracies and aggression; actively collaborated with India while promoting disinformation regarding India’s neutrality and lack of political designs on the Princely State; participated in and suppressed information regarding Dogra/RSS ethnic cleansing and genocidal killing of Muslims while promoting disinformation regarding Muslim violence targeting Hindus and Sikhs; subverted Hari Singh’s desire for independence; collaborated with Menon (Patel’s secretary) to accede the Princely State to India; negotiated the Instrument Accession on behalf of the Princely State with Patel, the man who had ordered him to act as the Princely State’s Prime Minister in India’s interest; stepped down in favor of Sheikh Abdullah at Jawaharlal Nehru’s request in order to “strengthen India’s hand” at the UN Security Council.

*September 18, 1948–
January 3, 1954*

Indian Supreme Court Justice

On Supreme Court when Article 370 implemented, initial orders thereunder issued, J&K Constituent Assembly convened and Indian government purge of its client National Conference government in the State of J&K (eliminating the negotiators of Article 370 on behalf of the State of J&K, the conveners and leaders of the J&K Constituent Assembly and the men the Indian government claimed (without factual legal basis) had popular support in the State of J&K (and therefore the presumptive authority to represent the people of the State of J&K) in the foregoing.

*January 4, 1954–
December 22, 1954*

Chief Justice of Indian Supreme Court

Chief Justice when Basic Order issued and India consolidated its annexation and colonization of IAJK.

Post-1954

Indian public intellectual and authority on IAJK affairs

Promoted Indian policies on the annexation and colonization of IAJK; promoted Indian disinformation regarding the accession of the Princely State in India and internationally; credited with Krishna Menon's January 1957 UN Security Council speech publicly declaring India's annexation and colonization of IAJK internationally; promoted disinformation regarding the role of the UN Security Council (claiming it had no authority) and operative UN Security Council resolutions (claiming they were void and inoperative).

V. Capricious, Not Arbitrary
The Supreme Court's Jurisprudence Legalizing India's Criminal Course of Conduct in IAJK

“[T]he Constitution makers attached great importance to the final decision of the Constituent Assembly, and the continuance of the exercise of powers conferred on the Parliament and the President by the relevant temporary provisions of Art. 370(1) is made conditional on the final approval by the said Constituent Assembly.”

Prem Nath Kaul v. State of Jammu and Kashmir,
AIR 749, 1959 SCR Supl. (2) 270 (March 2, 1959)

To the extent that contemporary commentators critically examine the illegal course of conduct of India's Supreme Court with respect to IAJK and its people, it is typically through the lens of the “erosion” of Article 370 and the Supreme Court's failure to stop that process. A predicate of such narratives is that India, at the effectiveness of its constitution on January 26 1949, “granted” the State of J&K meaningful autonomy pursuant to Article 370. The “concern” is that through Indian executive and legislative action that “autonomy” was gradually reduced to a “hollow shell” and ultimately “abrogated” in 2019. In this narrative, the Supreme Court's failure is to have inadequately checked executive and legislative “overreach.”

There are at least three fundamental problems with this narrative. First, as discussed in Section III of this report, Article 370 was itself illegal and invalid and the product of antecedent brazen illegalities. By starting with the “erosion” of Article 370, the illegality of Article 370 itself is obscured and, consequently, subsequent developments are misconstrued. This is true even if India's specious legal arguments regarding the validity of the Instrument of Accession are stipulated. In order for the Instrument of Accession to be valid, it must be seen as a treaty freely entered into by two sovereigns (India and the Princely State)—India had no authority to “grant” (or take away) any rights of the State of J&K, let alone modify the terms

and conditions of that treaty, including by adopting Article 370.

Second, the State of J&K never “enjoyed” autonomy under India. As discussed in Section III of this report, the governments in the State of J&K were never independent or representative; they were, from even before India's adoption of Article 370 and its constitution, Indian agents. Article 370 and the purported autonomy it provided were a façade. In reality, as further described in this Section, India achieved what it sought to in, and imposed what it wanted to on, the State of J&K throughout the period. The nature of the State of J&K's “autonomy” did not change over time; what changed was India's agenda regarding the State of J&K, the degree to which India utilized local Indian agents to implement that agenda (rather than do so directly) and the content and tone of Indian disinformation campaigns around such agenda (for domestic and international audiences, respectively). Functionally, the façade of Article 370 and its purported “autonomy” facilitated (rather than restrained) Indian manipulation, control, violations and impunity in IAJK by helping to obscure those realities.

Third, the Supreme Court was not and is not a passive actor in India's illegal course of conduct toward IAJK or its people. It was and is foundational and instrumental in that course. The discussion of Mehr Chand Mahajan in Section IV of this report elaborates

one aspect of this. This Section will elaborate others through specific cases heard by the Supreme Court.

a. An Unnatural Process of Erosion

Article 370 was an invalid extension of the invalid Instrument of Accession and an illegal act of annexation (as a step to make India's occupation of IAJK permanent). The process of "eroding" the autonomy it nominally provided and achieving the "full integration" of IAJK with India (as overtly demanded by Indian Hindu supremacists since at least 1951) officially began with the issuance of the Basic Order in 1954.¹⁰⁰ That official process continued through orders issued by India's president pursuant to Article 370 and the Basic Order, including dozens of such orders issued after the dissolution of the J&K Constituent Assembly in January 1957 (although the concurrence of that Assembly was a condition to the effectiveness of such orders pursuant to Article 370 itself). While Article 370 did not grant or provide the State of J&K autonomy, it did provide political cover for India to achieve what India wanted in IAJK under a regime of pretextual (but fictitious) representation and therefore without (or with minimal and misdirected) scrutiny. Contrary to the implication of the term "erosion" which is widely used in this context, this was not a natural, passive process. It was an active, systematic process.

One of the outcomes of that process was (prior to the August 2019 "abrogation" of Article 370) to extend practically all of the Indian Constitution to the State of J&K except where it was politically more expedient for India to not extend provisions. So, for example, Indian constitutional rights that would have undermined the longstanding and widespread practice of arbitrary detention in IAJK were not extended. Other generally applicable Indian constitutional provisions, like those that would have undermined legacy laws

granting preferential rights to immovable property and education in IAJK to former State Subjects of the Princely State, were also not extended, since to do so was considered politically advantageous by the Indian government, at least until August 2019.

Through such orders, the Indian government also overrode and modified the Constitution of Jammu and Kashmir (nominally, the separate constitution of an independent sovereign), including in fundamental ways. For example, the Indian government replaced the *Sardar-i-Riyasat*, the State of J&K's head-of-state elected by an independent legislature, with an Indian government-appointed governor in 1966. The head-of-state question was one of the primary mandates of the illegally convened and illegitimate J&K Constituent Assembly (1951–1957) and that constitutional assembly's answer to the question was enshrined in the J&K Constitution, which was then purportedly modified by a 1966 Indian government order. Through such orders, the Indian government also gave itself the power to dismiss J&K Governments at will (a power that it had already exercised absent any apparent legal "cover" since 1953) and appropriated to itself the powers of the State of J&K's legislature. Some such orders were issued when the Indian government had eliminated its client J&K Government and rule the State of J&K directly. In these cases, the Indian government simply had a governor it appointed "provide" the concurrence required by Article 370 (although the legal condition of Article 370 was the concurrence of an independent constitutional body with extraordinary powers, the J&K Constituent Assembly). The Supreme Court validated and "legalized" this illegal course of conduct in a series of judgments.

b. Prem Nath Kaul

In *Prem Nath Kaul v. State of Jammu and Kashmir* (1959),¹⁰¹ the Supreme Court

¹⁰⁰ See Section III(b) [Basic Order] above.

¹⁰¹ *Prem Nath Kaul v. State of Jammu and Kashmir*, AIR 749, 1959 SCR Supl. (2) 270 (March 2, 1959).

addressed the scope of Hari Singh's authority, the intent of Article 370 and the ultimate authority on the relationship between the State of J&K and India. In 1951, the petitioner, a landlord in the State of J&K, challenged the validity of the Big Landed Estate Abolition Act, a major land reform law enacted by Karan Singh pursuant to the Yuvraj Declaration on October 17, 1950. Seeking to recover his lands, the landlord argued that Karan Singh did not have legal authority to enact the Big Landed Estate Abolition Act because he was a constitutional monarch with limited powers that did not include legislative powers (pursuant to the Indian Constitution Proclamation and Article 370).

In March 1959, over two years after the J&K Constituent Assembly had dissolved, the Supreme Court held the following:

- At Partition, Hari Singh became an independent sovereign under international law.¹⁰²
- The Instrument of Accession preserved (and did not diminish) Hari Singh's sovereignty.¹⁰³
- The application of some articles of the Indian Constitution to the State of J&K pursuant to the Indian Constitution Proclamation did not make the State of J&K a constitutional monarchy.
- Despite appointing a "popular" government, Hari Singh remained an absolute monarch.

102 Ibid. "[W]ith the lapse of the British paramountcy the Rulers of Indian States were released from the limitations imposed on their sovereignty by the said paramountcy of the British Crown and by the treaties in force between the British Government and the States; this was, however, subject to the proviso prescribed by s. 7 of the Independence Act under which effect had to be given to the provisions of the agreements specified in the proviso, until they were denounced by the Rulers of the States or were superseded by subsequent agreements. In the result, subject to the agreements saved by the proviso, Maharaja Hari Singh continued to be an absolute monarch of the State, and in the eyes of international law he might conceivably have claimed the status of a sovereign and independent State."

103 Ibid. "[C]l. 6 of the Instrument clearly and expressly recognised the continuance of the sovereignty of His Highness in and over his State. We must, therefore, reject the argument that the execution of the Instrument of Accession affected in any manner the legislative, executive and judicial powers in regard to the government of the State which then vested in the Ruler of the State."

- Hari Singh delegated all of his powers to Karan Singh pursuant to the Yuvraj Proclamation—Karan Singh became an absolute monarch in Hari Singh's stead.
- The framers of India's Constitution intended for Article 370 to be temporary and for the relationship between the State of J&K and India to be determined by the J&K Constituent Assembly.¹⁰⁴
- The framers of India's Constitution intended the exercise of powers by India's parliament and president under Article 370 to be temporary and subject to final approval by the J&K Constituent Assembly.¹⁰⁵
- Article 370 did not diminish or affect Hari Singh's (or Karan Singh's) sovereignty.
- The rights and powers of the J&K Constitution were separate constitutional powers not subject to restriction by India or India's constitution.
- The Instrument of Accession controlled the relationship between India and the State of J&K until the J&K Constituent Assembly made a decision on that relationship.
- The J&K Constituent Assembly was the final authority on land reform, whether landlords would be compensated for land reform and whether and which Indian laws applied to the State of J&K.

The Supreme Court originally held that under Indian law the State of J&K is an independent sovereign, the State of J&K has a separate, independent constitution, Article 370 is a temporary provision subject to decisions made by the J&K Constituent Assembly and the J&K

104 Ibid. "The effect of the application of the present Article has to be judged in the light of its object and its terms considered in the context of the special features of the constitutional relationship between the State and India. The Constitution-makers were obviously anxious that the said relationship should be finally determined by the Constituent Assembly of the State itself; that is the main basis for, and purport of, the temporary provisions made by the present Article."

105 Ibid. "This clause shows that the Constitution makers attached great importance to the final decision of the Constituent Assembly, and the continuance of the exercise of powers conferred on the Parliament and the President by the relevant temporary provisions of Art. 370(1) is made conditional on the final approval by the said Constituent Assembly in the said matters."

Constituent Assembly is the ultimate authority on the relationship between India and the State of J&K. To quote the Supreme Court in *Prem Nath Kaul*:

[T]he Constitution makers attached great importance to the final decision of the Constituent Assembly, and the continuance of the exercise of powers conferred on the Parliament and the President by the relevant temporary provisions of Art. 370(1) is made conditional on the final approval by the said Constituent Assembly in the said matters...the proviso to cl. (3) also emphasises the importance which was attached to the final decision of the Constituent Assembly of Kashmir in regard to the relevant matters covered by Art. 370.

While these positions contravene applicable international law, operative mandates of the UN Security Council, India's commitments to the UN Security Council and India's commitments to the international community regarding the political future of the Princely State and the intent and purpose of Article 370, these are positions that are consistent with ideas articulated by India in the late 1940s and early 1950s to legitimate its claim to the "accession" of the Princely State to India.¹⁰⁶ It is important to recall that neither the J&K Government nor the J&K Constituent Assembly were ever legitimate or representative bodies. They were always Indian instrumentalities acting at the behest of New Delhi.

¹⁰⁶ This is consistent with ideas sometimes articulated by India internationally to legitimate the "accession" of the Princely State to India. See, for example, Graham, Dr. Frank P., "Letter dated 53/03/27 from Dr. Frank P. Graham, United Nations Representative for India and Pakistan, to the Secretary-General transmitting his 5th report to the Security Council," March 27, 1953, Annexes I and IV, <https://digitallibrary.un.org/record/605398?ln=en> and Jarring, Gunnar, "Report on the India-Pakistan question submitted in pursuance of the resolution of the Security Council of 21 February, 1957 [S/3793]," February 21, 1957, para. 19, <https://digitallibrary.un.org/record/574842?ln=en>.

c. *Sampat Prakash*

In *Sampat Prakash vs. State of Jammu & Kashmir & Anr* (1968),¹⁰⁷ the Supreme Court addressed the power of India's president to extend Indian laws to the State of J&K after the dissolution of the J&K Constituent Assembly (which under the text of Article 370 and under Indian law, per *Prem Nath Kaul*, was the final authority on which Indian laws applied to the State of J&K). On March 18, 1968, the J&K Government preventively detained Sampat Prakash, a well-known labor organizer, for organizing a labor strike seeking equitable benefits for workers.¹⁰⁸ Seeking to challenge his preventive detention, Prakash argued that the Indian president's approval (after the dissolution of the J&K Constituent Assembly) of legalized preventive detention in the State of J&K (in contravention of fundamental rights under the Indian constitution) was invalid.

In October 1968, over 11 years after the J&K Constituent Assembly had dissolved, the Supreme Court held the following:

- Article 370 was not intended to be temporary and survived even after the J&K Constituent Assembly had completed its work of adopting a new constitution for the State of J&K and dissolved itself.
- The J&K Constituent Assembly was not the final authority on which Indian laws applied to the State of J&K.
- Article 370 empowered India's president to exercise his discretion to apply the Indian Constitution to the State of J&K even after the J&K Constituent Assembly dissolved.
- Orders of India's president pursuant to Article 370 are legally applicable to the State of J&K, subject to consultation with the J&K Government in certain

¹⁰⁷ *Sampat Prakash vs State Of Jammu & Kashmir & Anr*, 1970 AIR 1118, 1970 SCR (2) 365 (October 10, 1968). <https://indiankanoon.org/doc/1573666/>.

¹⁰⁸ Under the Jammu and Kashmir Preventive Detention Act, 1964 [the predecessor to the Jammu and Kashmir Public Safety Act, 1978].

circumstances and the concurrence of the J&K Government in others.

- Further specifications made by India's president after such consultation or concurrence of the J&K Government apply without further consultation or concurrence.
- The rights and powers of the J&K Constitution are not separate constitutional powers; rather, they are subject to amendment pursuant to India's constitution.
- The manner of India's application of its constitution to the State of J&K made fundamental rights under that constitution inapplicable to preventive detention laws in the State of J&K; in the case of the denial of fundamental rights, the law of the State of J&K controls.

Without even referencing (let alone distinguishing) its *Prem Nath Kaul* precedent, the apex authority on Indian law held that under Indian law the State of J&K is not an independent sovereign, the State of J&K does not have an independent constitution, Article 370 is not a temporary provision subject to decisions made by the J&K Constituent Assembly and India's president (not the J&K Constituent Assembly) is the ultimate authority on the relationship between the State of J&K and India. To quote the Supreme Court in *Sampat Prakash*:

What the President is required to do is to specify the provisions of the Constitution which are to apply to the State of Jammu & Kashmir and, when making such specification, he is also empowered to specify exceptions and modifications to those provisions. As soon as the President makes such specification, the provisions become applicable to the State with the specified exceptions and modifications....Any specification made after such consultation or concurrence

has the effect that the provisions of the Constitution specified with the exceptions and modifications become applicable to the State of Jammu & Kashmir.

Not only do these positions contravene applicable international law, operative mandates of the UN Security Council, India's commitments to the UN Security Council and India's commitments to the international community regarding the political future of the Princely State, they also directly contravene the intent, purpose and text of Article 370 and the Supreme Court's own precedent in *Prem Nath Kaul*.

In *Sampat Prakash*, the Supreme Court (without any compunction or accountability) transformed the State of J&K into a subject Indian state under Indian law, Article 370 into a permanent Indian constitutional provision and India's president into the ultimate authority over the laws of the State of J&K (including the J&K Constitution). In so doing, the Supreme Court made India's occupation of IAJK permanent and India sovereign and dominant over IAJK while effectively denying the people of IAJK their right to self-determination. The *Sampat Prakash* decision is, accordingly, an act of annexation and colonization and illegal. Functionally, the Supreme Court legalized India's limitless exercise of extraordinary powers to impose (or to withhold the application of) laws on the State of J&K—as long as India itself was satisfied that it had consulted with or obtained the concurrence of (as applicable) the J&K Government.

d. Mohammad Maqbool Damnoo

In *Mohammad Maqbool Damnoo vs. State of Jammu and Kashmir* (1972),¹⁰⁹ the Supreme Court built on its *Sampat Prakash* precedent and addressed what constituted representative governance in the State of J&K under Indian

109 Mohammad Maqbool Damnoo vs. State of Jammu and Kashmir, 1972 AIR 963, 1972 SCR (2)1014 (January 5, 1972).

law. On June 24, 1970, a judge ordered the preventive detention of Mohammad Maqbool Damnoo.¹¹⁰ Seeking to challenge his preventive detention, Damnoo argued that the law under which he was being held was invalid since the purported concurrence required under Article 370 was provided by an Indian-government appointed governor and not the *Sardar-i-Riyasat*, the constitutional head-of-state of the State of J&K as determined by the J&K Constituent Assembly. Article 370 required the concurrence of the J&K Constituent Assembly to such a law. However, under *Sampat Prakash*, the Supreme Court had effectively replaced the J&K Constituent Assembly with the J&K Government for purposes of Article 370 (in order to make Article 370 permanent and legalize India's continued imposition (or withholding the application) of laws on the State of J&K). Damnoo argued that the constitutional head-of-state as determined by the J&K Constituent Assembly was the only legitimate representative of the J&K Government for purposes of the continued application of Article 370.

One of the primary questions the J&K Constituent Assembly was convened to resolve was whether the State of J&K's head-of-state would remain a scion of the British colonial Dogra dynasty or a democratically elected leader. While the convening of the J&K Constituent Assembly was illegal and anti-democratic, and that body acted for and at the pleasure of India, it resolved that the *Sardar-i-Riyasat*, the State of J&K's head-of-state, would be democratically elected by the democratically elected legislative assembly of the State of J&K. That answer was enshrined in the J&K Constitution adopted prior to the dissolution the J&K Constituent Assembly. The answer to the head-of-state question had been of significant interest to early Indian governments. For example, at least some authorities in India were concerned that the

abolition of the British colonial Dogra dynasty by the J&K Constituent Assembly would invalidate the Instrument of Accession (and impair the legal façade supporting India's argument regarding the Princely State's accession to India).

At the point of the *Mohammad Maqbool Damnoo* decision, the Indian government had over the course of years already imposed through various orders whatever laws (and withheld the application of others—like those constitutional rights that would undermine the legality of preventive detention in the State of J&K) it desired on the State of J&K. Among other things, the Indian government had empowered itself to dismiss elected J&K Governments (even though such governments were unrepresentative, Indian-client governments formed through anti-democratic, manipulated, unfree and unfair elections) and repeatedly removed client governments in the State of J&K to impose direct Indian rule. In 1966, the Indian government replaced the *Sardar-i-Riyasat* (the democratically-elected, constitutional head-of-state of the State of J&K pursuant to the J&K Constitution) with an Indian-appointed governor. Subsequently, when the Indian government decided to dismiss J&K Governments and impose an Indian-appointed governor on the State of J&K, the Indian government had the governor it appointed (who was purportedly acting as the J&K Government pursuant to the Supreme Court's re-interpretation of Article 370 in *Sampat Prakash*) provide the concurrence of the J&K Constituent Assembly required by Article 370. In such a period of direct rule, an Indian government-appointed governor had provided the concurrence to the arbitrary detention law under which Damnoo was detained.

In January 1972, 15 years after the J&K Constituent Assembly had dissolved, the Supreme Court held the following:

¹¹⁰ Like *Sampat Prakash*, Mohammad Maqbool Damnoo was preventively detained under the Jammu and Kashmir Preventive Detention Act, 1964 [the predecessor to the Jammu and Kashmir Public Safety Act, 1978].

- Following *Sampat Prakash*, Article 370 required the concurrence or consultation (as applicable) of the J&K Government (and not the J&K Constituent Assembly).
- A governor imposed on the State of J&K by the Indian government constituted the head-of-state of the J&K Government.
- Indian government-appointed governors are competent to give the concurrence or consultation (as applicable) required by Article 370 and perform the other constitutional powers of the head-of-state of the State of J&K.

Again, without even referencing (let alone distinguishing) its *Prem Nath Kaul* precedent, the apex authority on Indian law had (without any compunction or accountability) entirely abandoned the idea of the State of J&K as an independent sovereign with an independent constitution, Article 370 as a temporary provision subject to decisions made by the J&K Constituent Assembly and the J&K Constituent Assembly as the ultimate authority on the relationship between the State of J&K and India. Just four years after *Sampat Prakash*, the manufactured representation of an elected Government of J&K (serving at the pleasure and behest of the Indian government) was no longer necessary. *Mohammad Maqbool Damnoo* stands for the proposition that blatant, egregious self-dealing by Indian officials constitutes democratic, representative governance on foundational, constitutional matters for the State of J&K under Indian law. To quote the Supreme Court in *Mohammad Maqbool Damnoo*:

It is true that the Governor is not elected as was the Sardar-i-Riyasat but the mode of appointment would not make him any the less a successor to the Sardar-i-Riyasat. Both are heads of the State...There is no question of such a change being one in the character of that Government from a democratic to a non-democratic system.

Not only do the Supreme Court's positions in *Mohammad Maqbool Damnoo* contravene applicable international law, operative mandates of the UN Security Council, India's commitments to the UN Security Council and India's commitments to the international community regarding the political future of the Princely State, the intent, purpose and text of Article 370 and the Supreme Court's own precedent in *Prem Nath Kaul*, they also contravene basic notions of credulity, rationality and fairness. The assurance given by India at the UN Security Council was that Article 370 was included in India's constitution to avoid being "unfair to the Government and people of the State of Jammu and Kashmir" and "would automatically cease" in accordance with the "freely declared will of the people of Jammu and Kashmir."¹¹¹ Article 370 was actually the device utilized by India and its Supreme Court to legalize the annexation and colonization of IAJK under Indian law.

These three cases—*Prem Nath Kaul*, *Sampat Prakash* and *Mohammad Maqbool Damnoo*—established the Supreme Court's jurisprudence on Article 370 and, more broadly, the relationship of the State of J&K to India and the rights of people of the State of J&K, in each case under Indian law. In the context of the State of J&K (actually IAJK and its people), this is the structure institutionalized by the Supreme Court in the exercise of its power to ensure "complete justice." Rather than protect and guarantee fundamental rights, it sanctioned their violation. Rather than guarantee the rule of law, it legalized illegalities, contravening international rules, norms and standards through fundamentally unfair and capricious conduct. Rather than check and balance executive overreach and abuses of power, the Supreme Court used its power to legalize and abet abuses of power.

¹¹¹ See footnote 39 of this report.

e. Santosh Gupta

These foundational cases were followed by a December 2016 judgment by the Supreme Court in *State Bank of India v. Santosh Gupta*¹¹² which serves as a jurisprudential bridge to the August 2019 “abrogation” of Article 370 and Article 35A of the Indian Constitution (hereafter, Article 35A). *Santosh Gupta* was a conflicts of law case (a case about which regime of law controlled). The question in the case was whether an Indian statute regarding bank enforcement of collateral trumped a conflicting State of J&K statute, and specifically whether transfers of real property by State of J&K “permanent residents” (essentially, “State Subjects” of the Princely State and their descendants) to Indians would be permitted (although this violated State of J&K law and specific Indian constitutional privileges of the permanent residents of the State of J&K under Article 35A).

In arriving at its judgement, the Supreme Court specifically referenced both *Prem Nath Kaul* and *Sampat Prakash* and provided detailed textual analysis of Article 370, the Instrument of Accession and the Basic Order. The key holding of the Supreme Court (in aggressively overturning a judgment of the State of J&K high court) for present purposes was the following:

It is thus clear that the State of Jammu & Kashmir has no vestige of sovereignty outside the Constitution of India and its own Constitution, which is subordinate to the Constitution of India. It is therefore wholly incorrect to describe it as being sovereign in the sense of its residents constituting a separate and distinct class in themselves. The residents of Jammu & Kashmir, we need to remind the High Court, are first and foremost citizens of India.

The Supreme Court went on to say (emphasis added): “It is *rather disturbing* to note that various parts of the judgment speak of the absolute sovereign power of the State of Jammu & Kashmir. It is necessary to reiterate that...the State of Jammu & Kashmir is and *shall be* an integral part of the Union of India.” Here, the Supreme Court made rhetorical points consistent with a *Hindutva* worldview—taking affront at any suggestion that India’s illegal claims to sovereignty over IAJK are subject to examination or not inevitable. *Hindutva* is a militant Hindu supremacist, ethnonationalist ideology and movement which originally articulated the illegal idea (in the early 1950s) that IAJK is an “integral part” of India. These views are now mainstream orthodoxy in India—to suggest otherwise is to subject oneself to prosecution as a “secessionist” and “anti-national” who is challenging the “sovereignty” and “territorial integrity” of India.

f. Dis/integration

On August 5, 2019, the Indian government met the longstanding demands of *Hindutva* activists to “abrogate” Articles 370 and 35A of the Indian Constitution, eliminate the J&K Constitution and “fully integrate” the State of J&K with India, with a view to achieving the total disintegration, disempowerment, domination and subjugation of the people of IAJK. This was a departure from an ongoing, longstanding illegal course of conduct to a more grave (and still illegal) course, implemented by the Indian government through Article 370 itself. In August 2019, Indian authorities demonstrated in a distilled, abrupt manner that Article 370 was a device to achieve the inferiority, constitutional subordination and colonial domination of IAJK rather than (as long falsely advertised) a guaranty of nominal superiority, constitutional separateness and autonomy for IAJK. There were three foundational steps in this new course.

¹¹² *State Bank Of India vs Santosh Gupta And Anr.* [2017] 2 SCC 538 <https://indiankanoon.org/doc/105489743/> (December 16, 2016).

First, on August 5, 2019, India's president issued C.O. 272 pursuant to Article 370.¹¹³ This order:

- Superseded the Basic Order, which had been the foundation of India's claimed constitutional relationship with IAJK since 1954 and the basis of all of the orders imposed by India on the State of J&K and its people since that time. Now, after 65 years of imposing laws on the State of J&K through orders supplementary to the Basic Order, India eliminated and replaced the Basic Order.
- Following *Sampat Prakash* and *Mohammad Maqbool Damnoo*, equated a governor imposed by India on the State of J&K with the *Sardar-i-Riyasat*, the constitutional, democratically elected head-of-state State of J&K pursuant to the J&K Constitution, and the entire J&K Government.

Second, India's president issued C.O. 273, again pursuant to Article 370.¹¹⁴ This order:

- Extended *Sampat Prakash*, *Mohammad Maqbool Damnoo* and *Santosh Gupta* to claim that the Indian government had the authority to vest all of the J&K Constituent Assembly's powers in India's parliament and permitted India's parliament to give the consent required under Article 370 to itself.
- Used Article 370 to declare all of Article 370 inoperative. This eliminated the purported Indian constitutional basis for India's relationship with IAJK and the constitutional basis for all of the measures India imposed on IAJK since January 26, 1949 (the effective date of India's constitution).
- Replaced Article 370 with a new clause that applied all of the provisions of the

Indian Constitution to the State of J&K without any modification or exception, notwithstanding the J&K Constitution, legal custom or any other "instrument, treaty or agreement." This was a unilateral repudiation by the Indian government of the Instrument of Accession, the legal instrument that India claimed created the legal relationship between the Princely State (and the State of J&K) and India, and the J&K Constitution, the constitution of a sovereign state over which the Indian government had no legal authority.

Third, under the new Article 370, India's Home Minister, a Bharatiya Janata Party (hereafter, BJP) leader, introduced a bill into India's parliament passed by that parliament as The Jammu and Kashmir Reorganisation Act which, among other things, implemented the total political disintegration and disempowerment of the State of J&K, eliminated the pretense of local agency (let alone autonomy) in IAJK and set in motion a long-planned acceleration of forced demographic change in IAJK in favor of ethnonationalist Indian Hindus (completing a process begun by Hari Singh's government and allied *Hindutva* groups in 1947).

In the aftermath of these extraordinary and obscene steps, various petitions were filed seeking an emergency intervention by the Supreme Court. The Supreme Court reacted by not hearing these emergency petitions for four years. Rather than intervene, the Supreme Court ensured inaction to facilitate the factual re-engineering of the structures, laws and ground realities in IAJK which would ensure a *de facto* result consistent with the policy outcomes sought by the BJP-led Indian government independent of any pressure brought to cause the Supreme Court to technically invalidate these steps later. The Supreme Court's illegal course regarding IAJK, which legalized under Indian law annexation, colonization, self-dealing and the misrule of law and abetted the Indian government's

¹¹³ For the full text of this order, please see [Exhibit D](#).

¹¹⁴ For the full text of this order, please see [Exhibit E](#).

illegal course of conduct regarding IAJK was sealed by the Supreme Court's obstruction of any opportunity to even grant a hearing to those violated and seeking redress.



“[T]he idea struck me that freedom is our birthright, even the Heavens cannot snatch it.”

— *Sampat Prakash Krundu, Kashmiri labor organizer and human rights activist (d. 2023). Prakash challenged his arbitrary detention in 1968. The Supreme Court denied him relief and, in so doing, legalized India's annexation and colonization of IAJK.*

The Capricious Jurisprudence of Article 370

	<i>Prem Nath Kaul</i>	<i>Sampat Prakash</i>	<i>Maqbool Damnoo</i>	<i>Santosh Gupta</i>
<i>Year</i>	1959	1968	1972	2016
<i>Is the State of J&K Sovereign?</i>	Yes —it is an independent sovereign; ultimately, only the J&K Constituent Assembly (and not India) can apply laws to the State of J&K.	No —but India’s president needs to sometimes consult with or obtain concurrence from the J&K Government.	No —but India’s president needs to sometimes consult with or obtain concurrence from the J&K Government, which can just be someone India itself appoints and imposes as a “governor.” of the State of J&K.	No —it is and shall be an integral part of India and has no vestige of sovereignty.
<i>Who is the ultimate legal authority in the State of J&K?</i>	The J&K Constituent Assembly	India’s president	India’s president	India (president, parliament, etc.)
<i>Is the J&K Constitution independent?</i>	Yes —totally independent and not subject to restriction by India.	No —it is subject to amendment by India.	No —it is subject to amendment by India.	No —it is totally subordinate to the Indian constitution
<i>Is Article 370 temporary?</i>	Yes —temporary and entirely subject to approval by the J&K Constituent Assembly.	No —it was intended to survive the J&K Constituent Assembly and framing of the J&K Constitution.	No	No

VI. Denying Liberty: *The Supreme Court's Jurisprudence on Arbitrary Detention in IAJK*

“[S]ubjective satisfaction of the detaining authority to detain a person or not, is not open to objective assessment by a Court.”

Mian Abdul Qayoom vs State of Jammu and Kashmir and others
[2020] High Court of Jammu and Kashmir, WP(Crl) no.251/2019
(February 7, 2020)

Arbitrary detention is the denial of a fundamental right—that of liberty—without due or fair process or in a manner that is not proportional, reasonable and necessary to a legitimate and lawful purpose. It constitutes a major violation of international law and inherently involves other major violations—including the denial of due process and access to justice. In IAJK, it also frequently results in myriad other violations, including extrajudicial executions (especially custodial killings), enforced disappearances, sexual violence and torture. As occupied territory (to which international humanitarian law applies), arbitrary detention in IAJK is both a grave human rights violation and a war crime (as a serious violation of international humanitarian law).

Indian authorities (including the Indian-client State of J&K) have for decades systematically and widely used arbitrary detention to suppress dissent and intimidate and persecute people for defending their human rights in IAJK. The UN Security Council specifically addressed this practice in its first substantive resolutions regarding IAJK due to the prevalence and significance of the practice in the territory.¹¹⁵ The issue of arbitrarily detained political prisoners was also a core issue taken up by the UN Commission for India and Pakistan in 1949.¹¹⁶ The practice has

remained widespread throughout the intervening decades and remains widespread in IAJK today. Indian authorities' use of arbitrary detention as a tactic of systematic and widespread repression in IAJK demonstrates that arbitrary detention also constitutes (in addition to a grave human rights violation and a war crime) a crime against humanity (or an inhumane act intentionally committed as part of a widespread or systematic attack against civilians). Arbitrary detentions in IAJK have routinely resulted in custodial killings, enforced disappearances, sexual violence and torture, which (given their systematic and widespread nature) also constitute crimes against humanity in IAJK.

The most widely used preventive detention law in IAJK over the last several decades is the Jammu and Kashmir Public Safety Act, 1978 (hereafter, and including its predecessor the Jammu and Kashmir Preventive Detention Act, 1964, the Public Safety Act).¹¹⁷ It authorizes detention without charges or trial for two years for the “maintenance of public order.” It has been described by Amnesty International and others as a “lawless law.” The Public Safety Act has been widely used to pretextually, arbitrarily and indefinitely detain Kashmiris without remedy or recourse.¹¹⁸

¹¹⁵ Clause 14 of [Resolution 47 \[21 April 1948\]](#) states: “The Government of India should ensure that the Government of the State releases all political prisoners.” This is repeated in the first UN Commission for India and Pakistan resolution on January 5, 1949.

¹¹⁶ See Letter from the Chairman of the United Nations Commission for India and

Pakistan to the Secretary-General of the United Nations introducing the Commission's 3rd interim report December 9 1949, <https://digitallibrary.un.org/record/472273?ln=en>, Appendix II (Prisoners of War and Political Prisoners), pp.84-85.

¹¹⁷ Act No. 6 of 1978, Jammu and Kashmir Public Safety Act [1978] (India), https://www.indiacode.nic.in/bitstream/123456789/10406/1/public_safety_act_1978.pdf.

¹¹⁸ Amnesty International, “Tyranny of a ‘Lawless Law India’: Detention Without Charge

Detainees are not permitted to challenge their detention for three months and then can only challenge their detention if they can demonstrate a procedural failing in the detention order. If a detainee is able to secure a release, the police can (and routinely do) obtain a new order of detention so that Kashmiri detainees can be indefinitely detained under the color of law. Many international human rights experts and mechanisms, including various international human rights treaty bodies, various UN human rights experts (including the UN Working Group on Arbitrary Detention) and the UN's Human Rights Committee have stated that the Public Safety Act violates international law, including the right to liberty, the right to a free and fair trial and the right to due process.¹¹⁹ The UN's Office of the High Commissioner for Human Rights has described it as part India's legal structure in IAJK to "obstruct the normal course of law, impede accountability and jeopardize the right to remedy for victims of human rights violations."¹²⁰ Very recently, several UN special rapporteurs and the Working Group on Arbitrary detention highlighted various ways in which the Public Safety Act is violative of law, "ripe for human rights abuse" and "may be used by authorities to quell legitimate expression, including on discriminatory grounds against Muslim and other minorities and against youth and adolescent boys."¹²¹ As a violative law extended by Indian-client governments to IAJK, the Public Safety Act is *per se* illegal and invalid (for further explanation, see Section III of this report)

or Trial Under the J&K Public Safety Act" (June 2019), https://www.amnesty.be/IMG/pdf/tyranny_of_aLawlessLaw_-_briefing.pdf.

119 OHCHR, Report on the Situation of Human Rights in Kashmir: Developments in the Indian State of Jammu and Kashmir from June 2016 to April 2018, and General Human Rights Concerns in Azad Jammu and Kashmir and Gilgit-Baltistan (June 14, 2018), <https://www.ohchr.org/Documents/Countries/IN/DevelopmentsInKashmirJune2016ToApril2018.pdf>, ¶¶ 61-62 [at pp 16-17].

120 *Ibid.*, ¶ 42 [at p. 11] [footnotes omitted].

121 Communication of UN special rapporteurs on promotion and protection of human rights and fundamental freedoms while countering terrorism the situation of human rights defenders, promotion and protection of freedom of opinion and expression, peaceful assembly and association and the situation of human rights defenders and the UN Working Group on Arbitrary Detention, OL IND 6/2023 [August 8, 2023], <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=28286>.

Given the prevalence and significance of the practice and its import as a tool of legally sanctioned repression in IAJK, it is no coincidence that two of the three foundational cases establishing the Supreme Court's jurisprudence regarding the State of J&K—*Sampat Prakash* (1968) and *Mohammad Maqbool Damnoo* (1972)—were arbitrary detention cases. As discussed in the prior Section, the Supreme Court established through such cases that fundamental rights accorded to Indian citizens would not be accorded to the people of the State of J&K (unless the Indian government determined to do was in its interest). What is widely described as a "failure" of the rule of law in respect of the *ADM Jabalpur Case*¹²² (which legalized the suspension of the right of *habeas corpus*, see Section II of this report) has characterized the rule of Indian law in the State of J&K—a permanent state of emergency with no right of *habeas corpus*.

The Supreme Court's approach to the arbitrary detention of Kashmiri detainees will be further examined through four exemplary cases, two of which the Supreme Court considered prior to the "abrogation" of Article 370 and two after. Generally, Kashmiri detainees are administrative detainees who are detained for prolonged (and practically indefinite) periods without having an opportunity to defend themselves in a court of law (however unfair that court and its processes may be). In a letter to the Chief Justice of India dated June 25, 2020, the executive committee of the Jammu and Kashmir High Court Bar Association, the leading independent association of lawyers in the State of J&K, reported that some 13,000 Kashmiris had been detained after the "abrogation" of Article 370.¹²³ Since August 6, 2019, more than 600 *habeas corpus* petitions had been filed in the Jammu and Kashmir High Court and, after more than 10 months,

122 Additional District Magistrate, Jabalpur v S.S. Shukla etc., etc., [1976] Supreme Court of India, 1976 AIR 1207, 1976 SCR 172 [Supreme Court of India].

123 Mandhani A, "99% Habeas Corpus Pleas Filed In J&K Since Article 370 Move Are Pending, HC Bar Tells CJI" [ThePrint, 2020] <https://theprint.in/judiciary/99-habeas-corpus-pleas-filed-in-jk-since-article-370-move-are-pending-hc-bar-tells-cji/450281/>.

not even one percent of the petitions had been resolved.¹²⁴ *Habeas corpus* is the right to have a detainee produced before a judge and, through a fair process, to have a determination made as to whether that person's detention is lawful. It is considered a fundamental right and essential for the defense of liberty. In IAJK, Indian law, including the Public Safety Act, legalize the denial of the right to *habeas corpus*.

a. Ashiq Hussain Faktoo

Of known, contemporary Kashmiri detainees, Ashiq Hussain Faktoo has been arbitrarily detained longer than anyone.¹²⁵ He was arbitrarily detained in 1993. He remains in detention at this writing, thirty years later. Faktoo rose to prominence with his 1990 appointment as spokesperson for Hizbul Mujahideen, a pro-self-determination armed resistance group in IAJK. He was preventively detained under the Public Safety Act and tortured at the Papa-2 interrogation center in Srinagar and the Talab Tillo interrogation center in Jammu.

Faktoo was convicted under of the Terrorism and Disruptive Activities (Prevention) Act (hereafter, TADA), India's primary counter-terror law from 1985 to 1995 which violated international rules and norms in letter and practice,¹²⁶ for purportedly murdering a prominent human rights defender, H. N. Wanchoo.¹²⁷ Wanchoo's killing was a state-ordered execution and Faktoo was the person framed by the state for the crime (one he did not commit).¹²⁸ Faktoo was acquitted by a

TADA court (a special counter-terror court with less fair process than an ordinary Indian court) in 2001 because there was no evidence against Faktoo other than a confession extracted through torture.¹²⁹ After being appealed by the State of J&K, the Supreme Court reinstituted a life sentence. Faktoo filed a writ petition before the Supreme Court—seeking redress for the violation of fundamental constitutional rights due to the lack of evidence against him and a conviction on the basis of an uncorroborated confession extracted through torture—which the Supreme Court dismissed.

Because a life sentence under applicable law is 20 years, Faktoo appealed for his release to the State of J&K high court in 2012. His appeal was denied.¹³⁰ Faktoo again filed a writ petition before the Supreme Court seeking his release on the grounds that his original conviction—without evidence and based only on uncorroborated confession extracted through torture—was fundamentally unfair. On August 30, 2016, the Supreme Court dismissed his petition, ruling that it did not have jurisdiction “to reopen the issue in departure to the established and settled norms

cases of torture, extrajudicial executions, and disappearances and together with a local lawyer had brought these cases to the attention of the High Court and international human rights organizations. He was assassinated by unidentified gunmen on December 5, 1992. Because Wanchoo was a Hindu, the government found his work particularly embarrassing: it could not dismiss him as a militant. Although Indian officials claimed that the persons responsible were members of “a fundamentalist organization,” human rights activists who investigated the case have alleged that two members of the militant organization Jamiat-ul Mujahidin were released from jail on condition that they kill Wanchoo. At least one of the militants was subsequently killed by Indian security forces. Human Rights Watch, *Behind the Kashmir Conflict: Abuses by Indian Security Forces and Militant Groups Continue*, December 1999, <https://www.hrw.org/reports/1999/kashmir/defenders.htm>.

¹²⁹ According to Faktoo, he was tortured. He provides an account in his book *THE VICTIM OF POLITICAL VENDETTA*: “During the course of my interrogation, the security agencies made all-out attempts to pin me as a suspect in the murder of H.N. Wanchoo, laying the groundwork for my indefinite incarceration and imprisonment. At least two months passed while I held off. They wrapped a blanket around my head and carried me to a waiting security van. The CBI jail in Lodhi Colony, Delhi, is where I was compelled to spend the night after being apprehended. I was subjected to standard interrogation techniques in an effort to get a confession from me about my role in Wanchoo's murder....After I finally gave in, CBI investigators wanted me to sign a document attesting to my guilt in every crime committed in India between 1947 and the assassination of former prime minister Rajiv Gandhi. Officers from the CBI assured me that my confessional testimony would not be enough to condemn me in any court, and that I would be freed as part of a nationwide amnesty in a few years. After hearing their words of encouragement, I decided to grant their request and make a confession.”

¹³⁰ “Till Death,” *Kashmir Life*, November 26, 2012, <https://kashmirlife.net/till-death-11533/4/>.

¹²⁴ Ibid.

¹²⁵ There are untold thousands of Kashmiri detainees who have never been formally charged or whose families have limited or no information about their disappeared or detained loved one or whose cases are not raised to public attention out of fear of futility or of [further] reprisals.

¹²⁶ For example, TADA did not provide for the right to a fair trial, did not presume the innocence of the accused (reversing the burden of proof in favor of the state) and prohibited ordinary appeals of judgements. TADA was widely criticized for its myriad failures and allowed to lapse in 1995.

¹²⁷ See, Section 3 in the Prevention of Terrorism Act, 2002, <https://indiankanoon.org/doc/776860/>.

¹²⁸ Hriday Nath Wanchoo was a Kashmiri trade unionist and human rights defender. He was considered an enemy of the state and was a victim of state violence, while the state pursued a disinformation campaign to blame armed resistance fighters for his killing. H. N. Wanchoo, a retired trade unionist and a communist, had documented

and parameters.”¹³¹ Instead of using its extraordinary powers to redress violations and ensure complete justice is done (as per its mandate), the Supreme Court claimed it had no authority in this case.



Asiq Hussain Faktoo, Kashmiri spokesman for pro-self-determination armed resistance group framed for murder, tortured and subjected to ongoing arbitrary detention since 1993. The Supreme Court has dismissed his attempts to secure his release.

b. Masarat Alam Bhat

Of known, contemporary Kashmiri detainees, Masrat Alam Bhat has been arbitrarily detained longer than anyone other than Ashiq Hussain Faktoo. Bhat is the chairman (by succession; both the previous chairman and the next-in-line, Syed Ali Shah Geelani and Muhammad Ashraf Sehrai, died while arbitrarily detained by Indian authorities which, in Sehrai's case, constituted a custodial killing through denial of adequate healthcare) of Tehreek-i Hurriyat, a pro-self-determination political party. He has been a member of other pro-self-determination political parties, including Muslim League Jammu and Kashmir. Bhat was first preventively detained in October 1990. He was 19 years old. He was released in 1991, detained again in 1993, released again in 1997, detained again in 1999, released again in 2005, detained again in 2008, released again 2010, detained again in 2010, released again in 2014, detained again 2014, released again in 2015 (for 45 days; Narendra Modi called Bhat's release a "national

outrage") and detained again in 2015.¹³² In November 2020, the high court of the State of J&K overturned the 38th Public Safety Act detention order against him and ordered Bhat to be freed "if he is not required in any other case."¹³³ At this writing, he remains in detention under that 38th preventive detention order. He has spent around 26 years imprisoned without his guilt for any crime being determined by any kind of process, let alone a fair one.

Bhat's case is well-known and has been widely reported. Despite the egregiousness and prominence of the violations against Bhat and the Supreme Court's extraordinary powers to redress violations and a mandate to ensure complete justice is done, the Supreme Court has not intervened in Bhat's case¹³⁴ or even expressed condemnation of Bhat's treatment. This is true even after Jammu and Kashmir High Court Bar Association, the primary professional organization providing legal aid to victims of human rights violations in IAJK, specifically and publicly criticized the Supreme Court's failure to exercise its powers in this case.¹³⁵ Bhat remains detained and has never been compensated for the violations against him. When he has sought small accommodations, like attending the funeral of his closest family members, the state has refused.¹³⁶

Another case involving a political activist from the State of J&K demonstrates both the manner in which the Supreme Court could have acted in Bhat's case and the Supreme Court's discriminatory treatment of Bhat as a

¹³² Qadri, Nasir, "Masarat Alam; Asia's Longest Serving Political Prisoner?," Global Village Space, March 10, 2021, <https://www.globalvillagespace.com/masarat-alam-asias-longest-serving-political-prisoner/>.

¹³³ Mir, Hilal, "Why Kashmir Politician Masrat Alam Bhat Can't Walk Free After More Than 23 Years In Jail," HuffPost, January 1, 2019, https://www.huffpost.com/archive/in/entry/jailed-kashmiri-politician-masarat-alam-bhat_in_5c29ea47e4b08aaf7a92287e.

¹³⁴ Masarat Alam Bhat vs State Of J & K And Ors, 2004 CriLJ 566 (J&K High Court).

¹³⁵ Raafi, Muhammad, "Masarat Episode: Kashmir Bar Criticizes Unionists," Kashmir Life, March 13, 2015, <https://kashmirilife.net/masarat-episode-kashmir-bar-criticizes-unionists-74592/>.

¹³⁶ Mir, Hilal, "Why Kashmir Politician Masrat Alam Bhat Can't Walk Free After More Than 23 Years In Jail," HuffPost, January 1, 2019, https://www.huffpost.com/archive/in/entry/jailed-kashmiri-politician-masarat-alam-bhat_in_5c29ea47e4b08aaf7a92287e.

¹³¹ 2016 SCC Online SC 884 <https://www.scoonline.com/blog/post/2016/08/31/life-convict-ashiq-hussain-faktoos-prayer-of-hearing-review-petition-in-an-open-court-dismissed/>

Kashmiri Muslim (the group particularly targeted by Indian authorities for discrimination and repression in IAJK). In *Bhim Singh*,¹³⁷ the Supreme Court passed a judgment against State of J&K for the arbitrary detention of Bhim Singh, a Dogra Hindu (a group favored by Indian authorities in IAJK) political activist from Jammu. Singh was arbitrarily detained in the early morning hours of September 11, 1985. A month later, the Supreme Court produced a judgement in his case. The Supreme Court criticized the State of J&K and the Jammu & Kashmir Police on various procedural and other grounds, and held that “police Officers who are the custodians of law and order should have the greatest respect for the personal liberty of citizens and should not flout the laws by stooping to such bizarre acts of lawlessness. Custodians of law and order should not become predators of civil liberties. Their duty is to protect and not to abduct.” For its “mischievous or malicious” conduct, the Supreme Court ordered State of J&K to pay to Singh compensation of INR 50,000.



Masarat Alam Bhat, Kashmiri pro-self-determination political activist subjected to ongoing “revolving” arbitrary detention since 1990 (he has in aggregate been preventively detained for over 25 years). The Supreme Court has refused to use its powers to address the deprivation of his liberty.

c. Mian Abdul Qayoom

Advocate Mian Abdul Qayoom, a pre-eminent lawyer and the President of the Jammu and

Kashmir High Court Bar Association, was preventively detained under the Public Safety Act on the night of August 4, 2019 for his alleged “secessionist ideology.”¹³⁸ Qayoom has been a prominent advocate for victims of human rights violations in IAJK for decades. He is renowned for his *pro bono* representation in *habeas corpus* proceedings of people preventively detained pursuant to the Public Safety Act and been an outspoken critic of arbitrary and preventive detention in IAJK. He has been previously targeted for his advocacy, including through prior detentions in 1990, 1992, 2008, 2010 and 2016. He has survived two assassination attempts and lives with bullet injuries, including to his spine. At the time of his 2019 detention, he was 76 years old and suffered chronic health issues, including diabetes, diminished kidney function and severe nerve damage. He was held hundreds of kilometers from his home in Agra’s Central Jail and New Delhi’s Tihar Jail. While detained, on January 29, 2020, he suffered a heart attack (he was scheduled for heart surgery at the time of his detention).

A *habeas corpus* petition was filed in his case on August 21, 2019. Courts are mandated to address such petitions within 48 hours of filing and resolve cases within 15 days. However, the State of J&K high court did not hear his petition until January 31, 2020, over five months after the petition was filed. On February 3, 2020, the court reserved its judgement on his petition and finally dismissed it on February 7, 2020, upholding Qayoom’s ongoing detention.¹³⁹ The court held that “subjective satisfaction of the detaining authority to detain a person or not, is not open to objective assessment by a Court.” The court declared itself incompetent to question or substantively examine the executive’s exercise of its authority in a case about fundamental rights—rather than provide oversight, the court would simply defer to the executive. This

¹³⁸ Order no. DMS/PSA/105/2019 dated 6th August 2019, issued by District Magistrate, Srinagar

¹³⁹ Mian Abdul Qayoom vs State of Jammu and Kashmir and others [2020] High Court of Jammu and Kashmir, WP(Cr) no.251/2019 [High Court of Jammu and Kashmir]

¹³⁷ Bhim Singh, MLA vs State Of J & K And Ors., AIR 1986 SC 494 [November 22, 1985].

is legalization through the elimination of even the pretext of scrutiny and the blanket sanctioning of violations by a criminal executive.



Advocate Mian Abdul Qayoom, a pre-eminent Kashmiri human rights lawyer subjected to his sixth period of arbitrary detention in 2019 for his alleged “secessionist ideology.” The Supreme Court ordered his release from detention almost a year later, encouraging Qayoom to “adopt a more constructive approach.”

On appeal, the State of J&K’s high court again upheld Qayoom’s detention on May 28, 2020.¹⁴⁰ The court examined Qayoom’s alleged beliefs (based only on the allegations made by the state) and held that the detention was justified in the interest of “public disorder.” On further appeal to the Supreme Court, the Supreme Court on July 29, 2020 (almost a full year after Qayoom was arbitrarily detained) avoided any examination of the facts or law in the case.¹⁴¹ The Supreme Court ordered that Qayoom be released on July 30, 2020, but only on certain conditions—including that he not return to the State of J&K until August 7, 2020 and not make any public statements about his case. The Supreme Court concluded with this:

*Kashmir has been a troubled area.
Nature has been very kind to the place.
It is the human race which has been
unkind. It is time for all wounds to be
healed and look to the future within the*

¹⁴⁰ Mian Abdul Qayoom vs Union Territory of Jammu and Kashmir and others [2020] High Court of Jammu and Kashmir, LPA no. 28/2020 in [WP(Crl.) no. 251/2019] [High Court of Jammu and Kashmir]

¹⁴¹ Mian Abdul Qayoom vs Union Territory of Jammu and Kashmir and others [2020] Supreme Court of India, Special Leave to Appeal [Crl.] Nos.2833-2834/2020 [Supreme Court of India]

domain of our country. We are sure that the petitioner will also adopt a more constructive approach to the future and the Government will consider how to bring complete normalcy at the earliest.

d. Saifuddin Soz

Saifuddin Soz is an Indian-client Kashmiri Muslim politician and senior member of India’s Congress political party who has served in both houses of India’s parliament and as minister of India’s central government. Soz, along with thousands of prominent Kashmiri Muslim figures, was arbitrarily detained in August 2019. Soz’s case was exceptional in three respects: first, Soz is a prominent and senior Indian-client politician (although several other such figures were detained in August 2019, they are unusual targets of this form of widespread violation in IAJK); second, unlike most Kashmiri Muslim detainees, Soz was detained in his home (rather than in a prison); third, the State of J&K did not issue a formal detention order in his case (while this is common practice in arbitrary detentions targeting Kashmiri Muslim detainees, it is unusual for someone of Soz’s prominence). After 10 months of house arrest (armed men had prevented Soz from leaving his home), his wife filed a *habeas corpus* petition seeking his release.¹⁴² After Soz had been arbitrarily detained for approximately a year, the Supreme Court dismissed the petition and allowed Soz’s detention to continue. The Supreme Court held that since the State of J&K argued that there was no formal detention order in his case, he was not detained. When journalists attempted to interview Soz after the Supreme Court’s order, armed men physically prevented him from even speaking to the media.¹⁴³

¹⁴² Ganai N, Soz S, and Kashmir J, “I Am Still Not A Free Man,” Says Saifuddin Soz Fortnight After Detention Drama,” Outlook India, 2020, <https://www.outlookindia.com/website/story/india-news-im-not-a-free-man-saifuddin-soz-says-jammu-and-kashmir-admin-lied-to-supreme-court/358762>. Soz was only permitted to leave his home once during this period and that was to travel to Delhi for medical purposes after obtaining formal permission from the State of J&K. Mumtazunnisa Soz vs Union of India and another [2020] Supreme Court of India, Writ Petition(Criminal) No.138/2020 [Supreme Court of India].

¹⁴³ NDTV, “Saifuddin Soz Calls Out ‘No Detention’ Claim, Cops Blame Curbs On COVID,” <https://www.youtube.com/watch?v=po6il-tckbw>.

Arbitrary detention is a paradigmatic violation and crime in IAJK. It is the denial of liberty and fair process through lawfare, and the denial of the rule of law through law. India's treatment of IAJK can be described in the same terms—the denial of liberty and fair process through lawfare, the denial of the rule of law through law. India's occupation, annexation and colonization of IAJK is, in that sense, arbitrary detention at population scale. Systematic, widespread arbitrary detention has been an essential tool in achieving, maintaining and legitimating India's occupation, annexation and colonization of IAJK since the start of India's occupation. Indian authorities' systematic, longstanding practice of arbitrary detentions targeting Kashmiris—that is the crime against humanity of arbitrary detention in IAJK—demonstrates both the general unfreedom and rightlessness of Kashmiris.

Sampat Prakash (1968) and *Mohammad Maqbool Damnoo* (1972)—both arbitrary detention cases—were foundational to the Supreme Court's jurisprudence regarding the State of J&K. *Ashiq Hussain Faktoo* (2016) and *Masarat Alam Bhat* illustrate Indian law's illegal denial of Kashmiris' fundamental rights—including liberty, due process and access to justice—indefinitely, pretextually and with impunity. They illustrate the dark, absurd reality of Kashmiri rights under Indian law. *Mian Abdul Qayoom* and *Saifuddin Soz* (2020) demonstrate that even extravagant privilege (as an internationally known, widely respected lawyer and civil society activist in Qayoom's case and as a prominent Indian-client politician in Soz's case) does not afford Kashmiris protection under Indian law—as Kashmiris, their liberty is meaningless regardless of their status. They also demonstrate a recent overtness about Indian institutions, including the Supreme Court, regarding the violation of Kashmiris' rights—no pretext (however flimsy) is even required. Instead, while the Supreme Court aids and abets the Indian executive's criminality, it

legitimizes and furthers the propaganda that facilitates further and graver violations. So, in the *Mian Abdul Qayoom* case, the Supreme Court's judgement legitimizes and normalizes annexation and colonization by invoking rhetoric like “the domain of our country” to refer to IAJK and “complete normalcy” to refer to a situation of successful authoritarian domination while denigrating a model human rights defender (Mian Abdul Qayoom) for his failure to have a “constructive approach to the future” by standing for liberty, justice, human rights and the rule of law.

VII. Killing With Impunity: The Supreme Court's Jurisprudence On Extrajudicial Killing In IAJK

"We cannot ignore the fact that many in Kashmir who have gone astray are Indian citizens and it is this situation which has led to this incident. We do appreciate that a fight against militancy is more a battle for the minds of such persons, than a victory by force of arms, which is pyrrhic and invariably leads to no permanent solution. We cannot ignore that in this process some unfortunate incidents do occur which raise the ire of the civil population, often exacerbating the situation, and the belief of being unduly targeted with a feeling in contrast of the law and order machinery that it is often in the dock and called upon to explain the steps that they have taken in the course of what they rightly believe to be the nation's fight. We however believe that the examination of a complaint, and the provision of an effective redressal mechanism preferably at the hands of the administration itself, or through a court of law if necessary, is perhaps one the most important features in securing a psychological advantage."

Masooda Parveen vs Union Of India & Ors (May 2, 2007)

The right to life is the most fundamental of rights. All other rights are contingent on it—if it is denied, no other rights are possible. Extrajudicial killing is the deliberate denial of the right to life by a state actor without the sanction of fair and just law and legal process. Extrajudicial killing constitutes a major violation of international law. While no complete accounting of extrajudicial killings in IAJK is possible given Indian authorities' longstanding and ongoing lack of transparency, failure to investigate, suppression of information and repression, credible estimates put the number of killings in IAJK in just the period since January 1989 at over 96,000,¹⁴⁴ almost all of which are deliberate (and therefore extrajudicial) killings by Indian state or state-sponsored actors. As occupied territory (to which international humanitarian law applies), extrajudicial killing in IAJK is both a grave human rights violation and a war crime (as a serious violation of international humanitarian law). Given the systematic, widespread nature of extrajudicial killing in IAJK, it is also a crime against humanity.

The violations and crimes committed by Indian state and state-sponsored actors in IAJK, including extrajudicial killings, are paired with both *de facto* impunity (or a socio-political context that sanctions such impunity) and *de jure* impunity (or the formal legalization of impunity under Indian law). Exemplary in this regard is the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 (hereafter, AFSPA).¹⁴⁵ AFSPA authorizes Indian military and police personnel to use any force (including deadly force) if they subjectively believe it is necessary "for the maintenance of public order." AFSPA also prohibits (as a matter of law) any legal proceedings for "anything done or purported to be done in exercise of the powers conferred by" AFSPA without the "sanction" of the Indian government.¹⁴⁶ The Indian government has never provided its "sanction" to such a prosecution.¹⁴⁷ AFSPA therefore legalizes, and

¹⁴⁴ See, for example, Kashmir Media Service, "HR Violations in Kashmir," <https://www.kmsnews.org/kms/>.

¹⁴⁵ Act No. 21 of 1990, Armed Forces (Jammu and Kashmir) Special Powers Act (1990 [India], https://www.mha.gov.in/sites/default/files/The%20Armed%20Forces%20%28Jammu%20and%20Kashmir%29%20Special%20Power%20Act%2C%201990_0.pdf).

¹⁴⁶ Amnesty International, "Denied": Failures in accountability for human rights violations by security force personnel in Jammu and Kashmir (July 1, 2015), <https://www.amnesty.org/en/documents/asa20/1874/2015/en/>.

¹⁴⁷ OHCHR, Report on the Situation of Human Rights in Kashmir: Developments in the Indian State of Jammu and Kashmir from June 2016 to April 2018, and General Human Rights Concerns in Azad Jammu and Kashmir and Gilgit-Baltistan (June 14, 2018), ¶¶ 43-45 [at pp 11-12], <https://www.ohchr.org/Documents/Countries/IN/>.

guarantees legal impunity for, Indian state actors' human rights violations, war crimes and crimes against humanity in IAJK.

Despite this structural reality and the longstanding failure of Indian institutions to provide justice or remedy to Kashmiri victims, many Kashmiris have nonetheless undertaken extraordinary efforts to seek accountability and justice from Indian courts and human rights bodies, which are the only institutions with any "legal" authority available to them. For example, the International People's Tribunal on Human Rights and Justice in Jammu and Kashmir documented 214 cases of human rights violations for which accountability was sought, but the Indian government denied "sanction" to prosecute under AFSPA.¹⁴⁸ Rather than provide justice or remedy, Indian institutions, including Indian courts, have consistently promoted impunity in IAJK. For victims and their families, the consequence of their seeking justice from Indian institutions has often been reprisals by Indian forces, or suffering additional injustice and violations with further impunity.¹⁴⁹

AFSPA violates international law in both letter and practice. Among other things, through AFSPA, Indian authorities violate their duties to investigate, prosecute, and punish those responsible for human rights abuses, to combat impunity, to observe fair trial standards and to ensure that all people are treated fairly and equally before the law. Many international human rights experts and mechanisms, including various international human rights treaty bodies, various UN human rights experts (or special procedures) and the UN's Human Rights Committee, have stated that AFSPA violates international law and called for its repeal.¹⁵⁰ The UN Human Rights

[DevelopmentsInKashmirJune2016ToApril2018.pdf](#).

148 International Peoples' Tribunal for Human Rights and Justice in Indian Administered Kashmir (ITPK) and Association of Parents of Disappeared Persons (APDP), "Alleged Perpetrators: Stories of Impunity in Jammu and Kashmir", December 2012, pp.241-243, <https://jkccs.files.wordpress.com/2017/05/alleged-perpetrators.pdf>.

149 "DENIED" Failures in accountability for human rights violations by security force personnel in Jammu and Kashmir," Amnesty International, July 2015, <https://www.amnesty.org/en/wp-content/uploads/2021/05/ASA2018742015ENGLISH.pdf>.

150 OHCHR, Report on the Situation of Human Rights in Kashmir: Developments in the Indian State of Jammu and Kashmir from June 2016 to April 2018, and General Human Rights Concerns in Azad Jammu and Kashmir and Gilgit-Baltistan (June 14, 2018), ¶ 48 [at

Committee has noted that it "contributes to a climate of impunity and deprives people of remedies."¹⁵¹ In addition, as an illegal extension of Indian law to IAJK, AFSPA is *per se* illegal and invalid (for further explanation, see Section III of this report).

Despite numerous and longstanding demands from international experts, the Indian government has refused to repeal or even substantively amend AFSPA. This is true despite India's National Human Rights Commission acknowledging that it "often leads to the violation of human rights," another Indian government body recommending that it be amended to allow prosecutions for cases of sexual violence and a Supreme Court committee finding that it was "a symbol of oppression, an object of hate and an instrument, of discrimination and high-handedness."¹⁵² The Supreme Court has twice rejected legal challenges to AFSPA (in 1997 and 2007),¹⁵³ both times on the grounds that the law is necessary for the proper functioning of the Indian government in "disturbed" areas. That "proper functioning" is the commission of atrocity crimes against people and ensuring impunity for those crimes.

a. General Officer Commanding (Pathribal Fake Encounter)

On March 20, 2000, just hours prior to US president Bill Clinton's visit to India, 36 Sikh men were killed in the village of Chattisinghpura, Anantnag, Kashmir. The Government of India blamed "Pakistani terrorists" for the killing. On March 25, 2000, during a press conference with LK Advani,

p 13], <https://www.ohchr.org/Documents/Countries/IN/DevelopmentsInKashmirJune2016ToApril2018.pdf>.

151 UN Human Rights Committee, Consideration of Reports submitted by States Parties under Article 40 of the Covenant, Concluding Observations of the Human Rights Committee on India, U.N. Doc. CCPR/C/79/Add.81 (Aug. 4, 1997), ¶ 21, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G97177/39/pdf/G9717739.pdf>.

152 OHCHR, Report on the Situation of Human Rights in Kashmir: Developments in the Indian State of Jammu and Kashmir from June 2016 to April 2018, and General Human Rights Concerns in Azad Jammu and Kashmir and Gilgit-Baltistan (June 14, 2018), ¶ 47 [at pp 12-13], <https://www.ohchr.org/Documents/Countries/IN/DevelopmentsInKashmirJune2016ToApril2018.pdf>.

153 Administrative Reforms Committee headed by Veerappan Moily (2007) and Naga People's Movement Vs. Union of India (1997); available at: <https://indiankanoon.org/doc/1072165/>.

senior BJP leader and India's Home Minister, Senior Superintendent of Police Farooq Khan announced the killing of the five "foreign militants" responsible for the Chattisinghpora Massacre in a "successful" joint operation of an elite Indian army counterinsurgency unit (Rashtriya Rifles, 7th Battalion) and State of J&K police. On the night of March 23-24, 2000, five men had gone missing from villages near Chattisinghpora. On March 25, 2000, a person from the nearby village of Pathribal found the corpse of Jumma Khan, one of the men who had gone missing. This was now clearly a "fake encounter" case. In IAJK, "fake

"Pakistani terrorism" problem in IAJK and that Indian forces are successfully "combatting terrorism." This March 2000 fake encounter case became known as the Pathribal Fake Encounter.

In IAJK, thousands of people protested for days, demanding justice and the exhumation of the bodies of the supposed "foreign militants." On April 3, 2000, a demonstration of over 2,000 people reached the village of Brakpora where Indian forces opened fire killing eight and injuring many others. In a rare instance among hundreds of known fake



A memorial to the 13 Kashmiri civilians killed by Indian forces in the March-April 2000 Pathribal and Brakpora Massacres, Brari Angan, Islamabad, Kashmir. The Supreme Court denied the victims' families the right to seek a prosecution of the killers.

encounters" are a systematic, longstanding extrajudicial killing practice which involve the abduction and enforced disappearance of civilians by Indian forces (unless those civilians were previously arbitrarily detained and already in Indian custody), their execution and their bodies forcibly buried (typically after being mutilated, apparently to make potential later identification practically impossible), which the Indian state uses for propaganda purposes—both to claim that there is a

encounter killings and massacres in IAJK, the State of J&K caved to public pressure and ordered the exhumation of the bodies of the five alleged "foreign militants." On April 7-8, 2000, the corpses were exhumed. Although the corpses were bullet-ridden and badly burnt, the families of the disappeared villagers identified the bodies as those of the men who

had been disappeared from villages near Chattisinghpora.¹⁵⁴

The State of J&K subsequently sought to perform forensic analysis and DNA testing. The Indian Army insisted that those killed were “militants” and refused to cooperate with any investigation. The State of J&K turned the case to India’s Central Bureau of Investigation (hereafter, CBI) in 2002, which concluded that the Pathribal Fake Encounter was “cold-blooded murder.” The CBI filed a chargesheet in the relevant court on May 9, 2006 against five Rashtriya Rifles personnel for a criminal conspiracy to commit a fake encounter, against Major Amit Saxena for preparing a false seizure memo and a false complaint and against the State of J&K police’s Special Task Force (its elite counterinsurgency unit) for falsely claiming that they had recovered ammunition from those killed.

The Indian Army blocked any prosecution from proceeding by invoking AFSPA and sought validation from the Supreme Court.¹⁵⁵ In *General Officer Commanding* (2012), the Supreme Court ruled that no court could assert jurisdiction in the case unless the Government of India had first provided “sanction” to prosecute under AFSPA. The Supreme Court also ruled that the Indian Army could choose to pursue a court-martial at its discretion and asked the Indian Army to pursue a court-martial or criminal proceeding in the case. The Army elected to court-martial the accused only to dismiss the proceeding in its pre-trial phase on January 20, 2014 for purported lack of evidence.

The families of the victims of the Pathribal Fake Encounter petitioned the high court of the State of J&K to reinstate the case. The high court dismissed the plea on April 27, 2016, holding that the Indian Army had authority to terminate the case under the Supreme Court’s order. After exhausting all available legal

options, the families turned back to the Supreme Court for relief on July 27, 2016, asking that the Supreme Court implement its previous mandate to have a court-martial or criminal proceeding in the Pathribal Fake Encounter case and that the Supreme Court rule AFSPA an unconstitutional violation of the rights to a fair and impartial investigation. The Supreme Court has never ruled on the petition. No trial or court-martial has been held in the Pathribal Fake Encounter case. A prominent, contemporary human rights lawyer from IAJK, has correctly described this case as one in which it “is not only the trial in a case, but it is the trial of the institutions and justice system as well.”¹⁵⁶ Here, the Supreme Court has fulfilled its mandate to provide “complete justice” by legalizing impunity for a particularly heinous and obvious war crime in IAJK while ensuring that justice is denied to Kashmiri Muslim victims.

In 2017, Lieutenant General KS Gill of the Indian Army, a retired officer who was actively engaged in the Chattisinghpora Massacre investigation, confirmed in a public interview the Indian Army’s orchestration of the Chattisinghpora Massacre.¹⁵⁷

b. Lakhwinder Kumar (Zahid Farooq Sheikh)

On February 5, 2010, RK Birdi, Commandant of the 68th Battalion of India’s Border Security Force (hereafter, BSF), got stuck in a traffic jam in Brein, Nishat, Kashmir (just outside of his battalion headquarters) while he was returning from his annual medical exam. A local teenager, Zahid Farooq Sheikh, was walking in the area with a friend. BSF personnel later claimed that some boys in the area had heckled them. Constable Lakhwinder Kumar, who was accompanying Birdi, exited

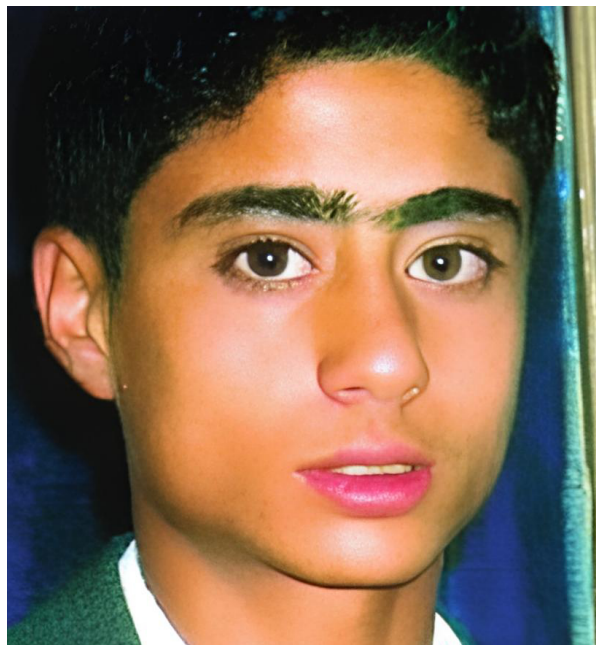
¹⁵⁴ See, e.g., “Structures of Violence: The Indian State in Jammu and Kashmir,” International Peoples’ Tribunal on Human Rights and Justice in Indian-Administered Kashmir and The Association of Parents of Disappeared Persons, 2015, <https://jkccs.info/structures-of-violence-the-indian-state-in-jammu-and-kashmir/>, pp. 103-110.

¹⁵⁵ *General Officer Commanding vs. CBI & Anr.*, [2012] 5 S.C.R. 599 (May 01, 2012). <https://indiankanoon.org/doc/40133779/>.

¹⁵⁶ Ahmad, Mudair, “Seventeen Years On, SC Notice on Pathribal Fake Encounter Brings Little Hope of Justice to Victims’ Families,” *The Wire*, August 25, 2017, <https://thewire.in/security/seventeen-years-sc-notice-pathribal-fake-encounter-brings-little-hope-justice-victims-families>.

¹⁵⁷ Operation Blue Star Could Have Been Avoided: Part 1, Sikh News Express [Youtube, 2017], https://www.youtube.com/watch?v=aXivbPvkSzE&t=1818s&ab_channel=SikhNewsExpress.

the BSF vehicle, chased Sheikh on foot and shot him twice, killing him. After protests demanding justice, an official investigation (again, itself a rare occurrence in IAJK) took place. After the investigation, the State of J&K



Zahid Farooq Sheikh, a Kashmiri teenager murdered by BSF Constable Lakhwinder Kumar on February 5, 2010. The Supreme Court denied his family the right to seek prosecution of his killer.

police filed a chargesheet in the relevant court against Birdi and Kumar. The BSF requested that the case be transferred to a military court. Under Indian law, the question of whether the BSF personnel could be tried in a criminal court turned on whether they were on “active duty” or not. “Active duty” in this context means “engaged in operations against an enemy” or “engaged on patrol or other guard duty.” If not on active duty, then Birdi and Kumar could (at least theoretically) be subject to a criminal prosecution; if on active duty, they could only be subject to a military proceeding. The Sheikh family petitioned the Supreme Court arguing the killer (who was accompanying someone on a personal errand) were not “on active duty” and therefore should be subject to prosecution in a criminal court.

In *Lakhwinder Kumar* (2013),¹⁵⁸ the Supreme Court held that although there “is no connection, not even the remotest one, between their duty as members of the Force and the crime in question,” Birdi and Kumar were “on active duty” because the Indian government had issued a notice in 2007 (three years before Sheikh’s murder) that said BSF personnel would be on “active duty” in the State of J&K. Just one year after the Pathribal Fake Encounter case, the Supreme Court extended the legal denial of access to justice to the people of IAJK and Indian forces’ legalized impunity for any and all acts or crimes targeting Kashmiri Muslims (including murder), even if that crime is totally unrelated to the purported policy purpose of laws like AFSPA—which are purportedly necessary for Indian forces to “do their job” in a “disturbed” area. Under Indian law, the only functional condition that needs to be satisfied in order to deny access to justice in IAJK or to Kashmiris is the Indian government’s exercise of its limitless discretion to so extend the misrule of law.

c. Masooda Parveen

Ghulam Mohiuddin Regoo, a State of J&K high court lawyer and a businessman, was abducted from his home in Chandhara, Pampore, Kashmir on February 1, 1998, by Indian Army personnel (from the 17 Jat) under the command of Major DS Punia accompanied by state-sponsored militiamen. He was arbitrarily detained at the Lethapora Army Camp (headquarters of the 17 Jat) where he was (to quote a description provided by the Supreme Court) “tortured mercilessly leading to his death whereafter explosives were placed on his dead body and then detonated to camouflage the murder.” After years of futilely seeking justice for her husband’s murder, Regoo’s widow, Masooda Parveen, sought compensation for Regoo’s killing to support herself and her four children. She filed a writ petition before the Supreme

¹⁵⁸ State Of J & K vs Lakhwinder Kumar & Ors, Criminal Appeal No. 624 OF 2013 (@Special Leave Petition [CRL.] NO. 5910 OF 2012) (April 25, 2013), <https://indiankanoon.org/doc/85628420/>.

Court seeking compensation on “compassionate grounds.”

In *Masooda Parveen* (2007),¹⁵⁹ the Supreme Court dismissed Parveen’s petition after finding it had “no merit.” The case as analyzed by the Supreme Court turned on whether Regoo was a “militant” (by which the Supreme Court means an armed resistance fighter in the struggle for human rights and self-determination in IAJK). Major Punia claimed that while detained at the Lethapora Army Camp, Regoo had “revealed that he was a Pakistani Trained Militant” and had “offered to lead a patrol to a hide out in the Wasterwan

While nominally acknowledging that “with a hapless and destitute widow in utter despair on the one side and the might of the State on the other, the search for the truth is decidedly unequal and the court must therefore tilt just a little in favour of the victims,” the Supreme Court took Punia’s account at face value after a cursory, tautological and laughable “analysis” of the facts that argued the Indian Army’s manufactured case for violations and impunity better than the Indian Army could. This, despite the fact that the Army’s account was facially ridiculous, consistent with false accounts typically given by Indian forces in



Masooda Parveen struggled for a decade to achieve some justice, or at least some compensation, for the Indian Army’s 1998 abduction, torture and execution of her husband, Ghulam Mohiuddin Regoo. The Supreme Court called her “a hapless and destitute widow in utter despair” and “tilt[ed] a little in favour of the victims” by throwing out her petition as having “no merit.”

Heights.” Punia, in his telling, led a patrol “accompanied by Regoo” where “Regoo had been released with a direction to go forward to uncover the hideout and when he had tried to create an opening in it, an explosion had resulted (probably due to booby trapping) leading to his death.”

IAJK in thousands of cases (many extensively documented), unsupported by anything other than the testimony of the person responsible for the crime (whose veracity the Supreme Court did not assess and who, even on the facts presented by the Army on abduction and arbitrary detention in just this case, is a war criminal) and involved an official cover up and the failure to produce key records (all

¹⁵⁹ *Masooda Parveen vs Union Of India & Ors* [May 2, 2007], <https://indiankanoon.org/doc/745885/>.

explicitly acknowledged by the Supreme Court). The Supreme Court seemed to give particular weight to an analysis quoted by the “Human Rights Cell” of the Indian Army which determined that Regoo “was a militant” and recommended against compensation to his family because that “would lower the morale of the security forces engaged in fighting militancy.” As for Parveen, that “hapless and destitute widow in utter despair,” like other Kashmiri Muslim victims of Indian state violence who are in a “decidedly unequal” position, the Supreme Court demonstrated no desire to seriously assess her claim, finding “no evidence to suggest that the petitioners’ case was worthy of belief.”

Note that before the Supreme Court provided its reasoning in this case, it felt compelled to “give a preview of the manner in which we intend to deal with this matter” as follows:

We cannot ignore the fact that many in Kashmir who have gone astray are Indian citizens and it is this situation which has led to this incident. We do appreciate that a fight against militancy is more a battle for the minds of such persons, than a victory by force of arms, which is pyrrhic and invariably leads to no permanent solution. We cannot ignore that in this process some unfortunate incidents do occur which raise the ire of the civil population, often exacerbating the situation, and the belief of being unduly targeted with a feeling in contrast of the law and order machinery that it is often in the dock and called upon to explain the steps that they have taken in the course of what they rightly believe to be the nation's fight. We however believe that the examination of a complaint, and the provision of an effective redressal mechanism preferably at the hands of the administration itself, or through a court of law if necessary, is perhaps one the most important features in securing a psychological advantage.

In *Masooda Parveen*, the Supreme Court demonstrated how it deals with what it calls an “unfortunate incident”—the abduction, torture, custodial killing and mutilation of a Kashmiri Muslim man, and the suffering of his family—in order to secure a “psychological advantage” in the “nation’s fight”—the Government of India’s illegal war of colonial domination on IAJK and its people. The Supreme Court is self-consciously and deliberately abetting and facilitating Indian actors’ ongoing grave violations and atrocity crimes in IAJK, including by validating Indian authorities’ dehumanization and demonization of a man as a “terrorist” without any evidence. Rather than examine a pattern of longstanding state harassment and a clear criminal motive—that of a vendetta—held by state actors acting in a brazen and illegal way (all of which is widely known and understood by anyone who seriously engages with the practices of Indian forces in IAJK), the Supreme Court went out of its way to validate brutal, inhuman techniques of colonial domination. Perhaps even more remarkable is the context in which this arises—a widow seeking a minor amount of compensation on compassionate grounds (and not, for example, a direct confrontation with the depravity of India’s colonial rule in IAJK and the systematic injustice delivered by Indian institutions to Kashmiri victims through a claim for substantive justice brought by high-profile litigants). The Kashmiri victim could not be more sympathetic and her aspirations for Indian justice more modest. The Supreme Court nonetheless wholesale abetted Indian atrocity crimes and denied all justice. This case exemplifies the Supreme Court’s delivery of complete injustice to Kashmiri victims.

In its *Masooda Parveen* decision, the Supreme Court also specifically referenced but chose not to follow its *Naga People’s Movement* (1997) precedent. In *Naga People’s Movement*, the Supreme Court held that, under AFSPA (as applied to Assam, another “disturbed” area), India’s armed forces are not empowered “to

supplant or act as a substitute for the civil power in the State.” In *Masooda Parveen*, the Supreme Court acknowledged that Punia did not even follow (and “no effort had been made by the army” to follow) the violative and impunity-promoting provisions of AFPSA that required the Army to involve and defer to civil authorities. The Supreme Court seemed to take the view that the situation in IAJK is essentially more “disturbed” and therefore went out of its way to show even greater deference to India’s Army. Which is to say the Supreme Court has been more supportive of violations and impunity targeting the people of IAJK, and especially Kashmiri Muslims, than even other demonized and violated groups subject to the domination of the Indian state (like those in Assam). This phenomenon of Kashmiri Muslims’ discriminatory treatment by the Supreme Court in the context of grave violations and impunity, even as compared to other demonized and violated groups, is also evident through the *Nandani Sundar* (2011)¹⁶⁰ case. In that case, the Supreme Court effectively ordered the dismantling of state-sponsored militias in the State of Chhattisgarh who were responsible for grave human rights violations in order to protect people’s fundamental rights. Despite the existence of comparable groups in IAJK who have been responsible for widespread grave human rights violations, including Village Defence Committees¹⁶¹ and now Village Defence Guards,¹⁶² the Supreme Court has not taken a similar stance in IAJK.

In *General Officer Commanding, Lakhwinder Kumar* and *Masooda Parveen*, the Supreme Court demonstrated a total lack of regard for the lives and rights of the people of IAJK, and Kashmiri Muslims in particular, an extreme deference to Indian authorities and an

extreme, pro-state impunity posture. The lack of regard for Kashmiri Muslims’ right to life indicates a lack of regard for all of their rights (again, without respect for the right to life, no rights are possible). Further, through its *Naga People’s Movement* and *Nandani Sundar* precedents, the Supreme Court has demonstrated that it has less regard for the lives and rights of Kashmiri Muslims than even other demonized, marginalized and violated groups. The Supreme Court’s treatment of extrajudicial killing and impunity in cases involving Kashmiri Muslim victims demonstrates the legal rightlessness of that population under Indian law.

In *Nandani Sundar* the Supreme Court spoke of the need of the “the people as a nation” to “bear the discipline, and the rigour of constitutionalism, the essence of which is accountability of power, whereby the power of the people vested in any organ of the State, and its agents, can only be used for promotion of constitutional values and vision” and condemned state power that “claims that it has a constitutional sanction to perpetrate, indefinitely, a regime of gross violation of human rights.” In the case of IAJK, the same Supreme Court has gone out of its way to legitimate, facilitate and itself perpetrate what it explicitly condemns in *Nandani Sundar*—state power that claims constitutional sanction to perpetrate, indefinitely, a regime of gross violation of human rights.

¹⁶⁰ *Nandini Sundar & Ors vs. State of Chhattisgarh* (2011) 7 SCC 547, <https://indiankanoon.org/doc/920448/>.

¹⁶¹ “Outsourcing Criminality” A JKCCS brief on Village Defence Committees,” Jammu Kashmir Coalition of Civil Society, August 2013, <https://jkccs.info/Reports/2013%20-%20JKCCS%20brief%20on%20VDCs.pdf>.

¹⁶² Nanda, Showkat and Atul Loke, “India Is Arming Villagers in One of Earth’s Most Militarized Places,” *The New York Times*, March 8, 2023, <https://www.nytimes.com/2023/03/08/world/asia/kashmir-village-defense-committees.html>.

VIII. Abusing To Control: The Supreme Court's Jurisprudence On Rape, Maiming And Persecution In IAJK

Cruel and inhuman treatment is the intentional infliction of severe mental or physical pain. In IAJK, Indian forces have inflicted various forms of inhuman treatment, including torture, rape maiming and various forms of collective punishment on a mass scale over decades to dominate, subjugate, threaten, intimidate and control the Kashmiri population. As occupied territory (to which international humanitarian law applies), in the context of IAJK these tactics of control constitute war crimes. Given the systematic and widespread nature of these violations in IAJK, they also constitute crimes against humanity.

a. Kunan Poshpora (Rape)

Torture is cruel and inhuman treatment to obtain information, to punish, to intimidate, to coerce or for a discriminatory purpose. While no complete accounting of torture in IAJK is possible given Indian authorities' longstanding and ongoing lack of transparency, failure to investigate, suppression of information and repression, torture is known to be a longstanding, institutionalized practice by Indian forces in IAJK and extremely widespread. For example, the US Embassy in New Delhi received the following reports during an April 1, 2005 confidential briefing by the International Committee of the Red Cross:

ICRC staff made 177 visits to detention centers in J&K and elsewhere (primarily the Northeast) between 2002-2004, meeting with 1491 detainees, 1296 of which were private interviews. XXXXXXXXXXXXX considered this group a representative sample of detainees in Kashmir, but stressed that they had not been allowed access to all detainees. In 852 cases, detainees reported what ICRC refers to as "IT" (ill-treatment): 171

persons were beaten, the remaining 681 subjected to one or more of six forms of torture: electricity (498 cases), suspension from ceiling (381), "roller" (a round metal object put on the thighs of sitting person, which prison personnel then sit on, crushing muscles -- 294); stretching (legs split 180 degrees -- 181), water (various forms -- 234), or sexual (302). Numbers add up to more than 681, as many detainees were subjected to more than one form of IT. ICRC stressed that all the branches of the security forces used these forms of IT and torture.... -- There is a regular and widespread use of IT and torture by the security forces during interrogation; -- This always takes place in the presence of officers; -- ICRC has raised these issues with the GOI for more than 10 years; -- Because practice continues, ICRC is forced to conclude that GOI condones torture.¹⁶³

Systematic torture is often attendant to another longstanding, systematic and widespread illegal practice in IAJK—the arbitrary detention of Kashmiris (on arbitrary detention, see Section VI of this report). For example, Human Rights Watch and Physicians for Human Rights have observed that “virtually everyone taken into custody by the security forces in Kashmir is tortured.”¹⁶⁴ In a Médecins Sans Frontier survey of 5,600 randomly selected households from 400 villages across all 10 districts of Kashmir in 2015, 31.2% of men and 21.3% of women respondents were impacted by torture.¹⁶⁵

¹⁶³ “US Embassy Cables: Red Cross Clashes with India over Treatment of Detainees,” The Guardian, December 16, 2010, <https://www.theguardian.com/world/us-embassy-cables-documents/30222>.

¹⁶⁴ “The Crackdown in Kashmir: Torture of Detainees and Assaults on the Medical Community”, Physicians for Human Rights and Asia Watch, February 1993, p.3, <https://www.hrw.org/sites/default/files/reports/INDIA932.PDF>

¹⁶⁵ “Kashmir Mental Health Survey Report 2015,” Médecins Sans Frontières (MSF), the University of Kashmir, Institute of Mental Health and Neurosciences (IMHANS), 2016, https://www.msfindia.in/sites/default/files/2016-10/kashmir_mental_health_survey_

Torture remains widely practiced in IAJK and against Kashmiri detainees, including targeting children¹⁶⁶ and as a public spectacle.¹⁶⁷ It is “routine, intrinsic to the very existence of the Indian State in Kashmir.”¹⁶⁸ Unlike other violations and crimes, there is no justification or defense for torture or inhuman treatment. Despite wide knowledge of systematic, widespread torture and extensive documentation of cases, no Indian forces personnel has ever been prosecuted for these crimes in IAJK.¹⁶⁹

Indian forces have specifically targeted Kashmiri women for torture by rape or sexual violence in a systematic, state-sanctioned effort “to humiliate and intimidate the local population.”¹⁷⁰ While rape and sexual violence are known to be grossly underreported in IAJK, there have been over 11,000 cases of rape or sexual violence targeting women in the period since January 1989.¹⁷¹ Indian forces have frequently targeted Kashmiri women who they accuse of being “militant sympathizers” and as a form of collective punishment or retribution. Rape has been a



Victims of February 23-24, 1991 mass rape and mass torture in Kunan-Poshpora, Kupwara. After decades of fighting Indian institutional failures to offer justice and efforts to suppress, intimidate and marginalize them, the Supreme Court has refused to hear victims' petitions seeking some justice.

[report_2015_for_web.pdf](#)

166 Andrabi, Kaisar, “Beaten, Heckled, Made Examples of: Detained Kashmiri Minors Speak Out,” *The Wire*, December 3, 2019, <https://thewire.in/rights/kashmir-minors-children-police>. Wallen, Joe, “Young Boys Tortured in Kashmir Clampdown as New Figures Show 13,000 Teenagers Arrested,” *The Telegraph*, September 25, 2019, <https://www.telegraph.co.uk/news/2019/09/25/young-boys-tortured-kashmir-clampdown-new-figures-show-13000/>.

167 “In Kashmir, Army Relays Tortures on Loudspeakers, Slaps UAPA on Stone-Pelters,” *The Wire*, October 31, 2019, <https://thewire.in/rights/kashmir-fact-finding>.

168 “Torture: Indian State’s Instrument of Control in Indian-administered Jammu & Kashmir,” Association of Parents of Disappeared Persons and Jammu Kashmir Coalition of Civil Society, February 2019, p.12 <https://jkccs.files.wordpress.com/2017/05/structures-of-violence-e28093-main-report.pdf>.

169 “Update of the Situation of Human Rights in Indian-Administered Kashmir and Pakistan-Administered Kashmir from May 2018 to April 2019,” Office of the United Nations High Commissioner for Human Rights, July 8, 2019, pages 27-28, para 126, https://www.ohchr.org/Documents/Countries/IN/KashmirUpdateReport_8July2019.pdf.

weapon used by Indian forces in IAJK to “punish, intimidate, coerce, humiliate and degrade.”¹⁷² Kashmiri men have frequently been forced to witness the rape of their female relatives in order to terrorize them and as retribution for resistance.¹⁷³ Indian forces have

170 “Torture, rape and deaths in custody,” Amnesty International, 1992, AI INDEX: ASA 20/06/92, p.11, <https://www.amnesty.org/download/Documents/192000/asa200061992en.pdf>.

171 See, for example, Kashmir Media Service, “HR Violations in Kashmir,” <https://www.kmsnews.org/kms/>.

172 “Rape in Kashmir: A crime of war,” Physicians for Human Rights and Asia Watch, 1993, p.2, <https://www.hrw.org/sites/default/files/reports/INDIA935.PDF>

173 Kazi, Seema. *Kashmir: Gender, Militarization & the Modern Nation-State*, South End

also commonly targeted Kashmiri men for rape and sexual violence, particularly as a means of custodial torture. Since IAJK is occupied territory (to which international humanitarian law applies) and since Indian forces have used rape a systematic and widespread manner, rape constitutes both a war crime and crime against humanity in IAJK and has never been punished.

On the night of February 23-24, 1991, at least 400 personnel of the 4 Rajputana Rifles, 68 Mountain Brigade of the Indian army gang-raped at least 40 women (by some accounts, 100 women), including at least 3 minors, and tortured at least 12 men in the villages of Kunan-Poshpora, Kupwara. Soldiers trampled and killed a four-day-old girl while raping her mother and maimed another infant girl. One of the torture survivors, Abli Dar, died due to medical complications from the amputation of a leg necessitated by his torture.¹⁷⁴ The incident was widely reported after investigations by local human rights groups and journalists as well as international human rights groups and journalists.

The victims in the Kunan-Poshpora mass rape/mass torture case fought against failures to investigate and official Indian and Indian media efforts to suppress and marginalize them. They took up their case at the State Human Rights Commission (which was eliminated by the Indian government in 2019) and fought for an official inquiry into their case until 2011. The Commission finally conducted an inquiry, found the victims' allegations to be true, recommended that the perpetrators be prosecuted and ordered the government to compensate the victims. The government failed to prosecute and failed to compensate the victims.

Press [2010], p.167.

174 For information about this incident, see, for example, "Structures of Violence: The Indian State in Jammu and Kashmir," International Peoples' Tribunal on Human Rights and Justice in Indian-Administered Kashmir and The Association of Parents of Disappeared Persons, 2015, <https://ikccs.info/structures-of-violence-the-indian-state-in-jammu-and-kashmir/> (including the timeline of the victims' efforts to seek justice through Indian institutions and the Indian state's case at p.70).

In 2013, the victims filed court cases in the State of J&K high court seeking enforcement of the Commission's recommendations. In 2014 and 2015, the Indian army filed motions to prevent any further investigations in the case and against the enforcement of the Commission's recommendations. In 2014, the Indian government also filed a special petition to the Supreme Court contesting the recommendation and seeking an order to end the victims' case. The victims filed a counter-petition in the Supreme Court in 2016.¹⁷⁵ To date, the Supreme Court has done nothing on the petitions before it.

32 years after the crimes and 12 years after the victims' succeeded in forcing official recognition of the crimes against them (overcoming official suppression, obfuscation, intimidation, marginalization, extortion and threats of reprisal), none of the Commission's recommendations have been enforced. At least six women involved in the case have died. It is hard to imagine a case more deserving of the Supreme Court's exercise of its power to initiate proceedings to redress fundamental violations. Here, the Supreme Court did not even have to initiate proceedings; it needed only to respond to petitions before it. Instead of fulfilling its purported mandate to ensure "complete justice" is done, the Supreme Court has done nothing, ensuring impunity for grave violations while emphatically reinforcing for Kashmiris the utter futility of seeking Indian justice.

Like in the *Nandani Sundar* (2011) case, the Supreme Court's discriminatory treatment of Kashmiri Muslims in the context of grave violations and impunity, even as compared to other demonized and violated groups, is evident through a comparison of the court's approach in *Kunan Poshpora* to its approach to *Extra Judicial Execution Victim Families Association* (2016).¹⁷⁶ *Extra Judicial Execution*

175 Athavale, Sanika, "Kashmir's Kunan & Poshpora: What Has Indian Judiciary Done For Mass Rape Victims?," The Logical Indian, February 27, 2020, <https://thelogicalindian.com/exclusive/kunan-poshpora-rape-army-justice-19915>.

176 *Extra Judicial Execution Victim Families Association v. Union of India* (2016) 14 SCC 578 <https://indiankanoon.org/doc/51378140/>.

Victim Families Association involved the failure of Indian authorities to appropriately investigate and provide remedy to victims of “fake encounter” killings in the “disturbed” area of Manipur. In that case, and in stark contrast to *Kunan Poshpora*, the Supreme Court ordered impartial investigations and adequate compensation.¹⁷⁷ Consider the following contrasts between the Supreme Court’s approach in *Kunan Poshpora* to its holdings in *Extra Judicial Execution Victim Families Association*:

- Where the Supreme Court promoted delay, official obstruction and the denial of justice in *Kunan Poshpora*, the Supreme Court stood for the opposite in *Extra Judicial Execution Victim Families Association*, where it held the following:

If a crime has been committed...it cannot be over-looked only because of a lapse of time. What is also not acceptable is that the law having been laid down by the Constitution Bench, it was the obligation of the State to have suo motu conducted a thorough inquiry at the appropriate time and soon after each incident took place. Merely because the State has not taken any action and has allowed time to go by, it cannot take advantage of the delay to scuttle an inquiry....To provide access to justice to every citizen and to make it meaningful, this Court has evolved its public interest jurisprudence where even letter-petitions are entertained in appropriate cases.... This is precisely what has happened in the present petitions where the next of kin could not access justice even in the local courts and the petitioners have taken up their cause in public interest. Our constitutional jurisprudence does not permit us to shut the door on such persons and our constitutional

obligation requires us to give justice and succour to the next of kin of the deceased.

- Where the Supreme Court promoted defiance and non-implementation of the recommendations of the State Human Rights Commission (which were extremely long-fought and hard-won by victims in the face of institutional malfeasance and official obstruction, extortion, intimidation and threats of reprisal) in *Kunan Poshpora*, the Supreme Court stood for the opposite in *Extra Judicial Execution Victim Families Association*, where it held the following:

We expect all State Governments to abide by the directions issued by the [National Human Rights Commission] in regard to compensation and other issues as may arise from time to time...we do feel it imperative to bring it to the notice of all State Governments that it would be but a small step in the protection of life and liberty of every person in our country if a State Human Rights Commission is constituted at the earliest.

- Where the Supreme Court promoted violations, impunity, the grave violation of rights and punishment for attempting to defend rights in *Kunan Poshpora*, the Supreme Court stood for the opposite in *Extra Judicial Execution Victim Families Association*, where it held the following: “If the people of our country are deprived of human rights or cannot have them enforced, democracy itself would be in peril.”

Even in obvious, egregious IAJK cases like *Kunan Poshpora*, the Supreme Court has been unconcerned with the deprivation of the human rights of Kashmiri Muslims or their inability to enforce their rights. The Supreme Court has freely exercised its power to imperil the possibility of democracy in IAJK.

¹⁷⁷ The Supreme Court ruled that no one can act with impunity, particularly when an innocent person is killed. The Supreme Court recognized that significant abuse of power had occurred in Manipur and established a three-member commission to investigate and provide accurate information regarding the killings.

b. J&K High Court Bar Association (Maiming)

The maiming of protestors (to say nothing of bystanders) has been specifically and repeatedly condemned by the UN Security Council.¹⁷⁸ The maiming of children during armed conflict is one of six especially grave violations condemned by the UN Security Council.¹⁷⁹ In IAJK, Indian forces routinely and systematically maim protestors, bystanders and others, especially targeting and affecting children. A preferred instrument of maiming in IAJK is the shotgun, which Indian forces started using in 2010 and describe as a “non-lethal” means of “crowd control.”

According to the Indian government’s own records, in the period between July 2016 and February 2017 (in just those seven months), Indian forces used shotguns on civilian protestors to kill at least 80 people,¹⁸⁰ maim at least 6,221 and blind at least 782, with children especially targeted.¹⁸¹ Prominent human rights organizations, including Human Rights Watch and Amnesty International, have demanded that Indian forces stop using shotguns in IAJK, which violate various international legal obligations, including under the UN’s Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, UN’s Guidance on Less Lethal Weapons in Law Enforcement, the Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (Protocol III) and the International Covenant on Civil and Political Rights.¹⁸² Consistent with its general practice

(at least with respect to IAJK), the Indian government has failed to comply with its legal obligations.

On July 29, 2016, the Jammu & Kashmir High Court Bar Association, the leading independent association of lawyers in the State of J&K (prior to its incapacitation by the Indian government in 2020),¹⁸³ filed a writ petition seeking to ban the use of shotguns for crowd control in IAJK.¹⁸⁴ The Bar Association’s claim specifically sought to address the period of shotgun use referenced above which resulted in widespread grave violations and was widely reported and condemned. The State of J&K’s high court rejected the writ petition on September 21, 2016. The Bar Association appealed to the Supreme Court on December 1, 2016.¹⁸⁵ On April 28, 2017, instead of banning the use of an illegal weapon being used to indiscriminately and widely kill and maim Kashmiri civilians, the Supreme Court postponed until May 9, 2017.¹⁸⁶ The Supreme Court said it could only “suspend” the use of shotguns against civilians in IAJK if the Bar Association could provide assurance that civil disobedience, or what the Supreme Court called “violence and stone pelting,” would stop.¹⁸⁷ The Supreme Court gave the Bar Association two weeks to come up with a “road map.” To the Supreme Court, civilians protesting against grave violations and atrocity crimes is a problem, and their being maimed and killed through indiscriminate violence by illegal military

178 UN Security Council, Res. 392, 19 June 1976, preamble and § 1; Res. 417, 31 October 1977, preamble and § 3; Res. 473, 13 June 1980, preamble; Res. 556, 23 October 1984, preamble and § 2; Res. 560, 12 March 1985, § 2; Res. 569, 26 July 1985, preamble and § 2.

179 “Killing and Maiming,” Office of the Special Representative of the Secretary-General for Children and Armed Conflict, <https://childrenandarmedconflict.un.org/six-grave-violations/killing-and-maiming/>.

180 Nadimpally, Sarojini, “Use of Pellet Guns Has Caused a Public Health Crisis in Kashmir,” *The Wire Science*, March 29, 2017, <https://science.thewire.in/health/pellet-guns-kashmir-public-health/>.

181 “India: Stop Using Pellet-Firing Shotguns in Kashmir,” Human Rights Watch, Sept. 4, 2020, <https://www.hrw.org/news/2020/09/04/india-stop-using-pellet-firing-shotguns-kashmir>. See also “My World is Dark: State Violence and Pellet-firing Shotgun Victims from the 2016 Uprising in Kashmir,” Association of Parents of Disappeared Persons (APDP), Kashmir, Oct. 2019, <https://apdpkashmir.com/my-world-is-dark-state-violence-and-pellet-firing-shotgun-victims-from-the-2016-uprising-in-kashmir/>.

182 “Losing Sight in Kashmir: The Impact of Pellet-Firing Shotguns,” Amnesty

International, Sept. 13, 2017, <https://www.amnestyusa.org/reports/losing-sight-in-kashmir-the-impact-of-pellet-firing-shotguns/>; “India: Stop Using Pellet-Firing Shotguns in Kashmir,” Human Rights Watch, Sept. 4, 2020, <https://www.hrw.org/news/2020/09/04/india-stop-using-pellet-firing-shotguns-kashmir>.

183 Javid, Azaan, “J&K HC Bar Association Denied Nod for Polls over Reference to Kashmir as a ‘Dispute,’” *The Print*, November 10, 2020, <https://theprint.in/india/governance/jk-hc-bar-association-denied-nod-for-polls-over-reference-to-kashmir-as-a-dispute/541026/>.

184 J&K High Court Bar Association vs Union of India & ors. [2020] WP(C) (PIL) no.14/2016 <https://indiankanoon.org/doc/63200140/>.

185 Jammu And Kashmir High Court Bar vs Union Of India [2016] (C) No(s). 33734/2016, <https://indiankanoon.org/doc/132221593/>.

186 Ibid.

187 Rautray, Samanwaya, “Supreme Court Asks Jammu and Kashmir High Court Bar Association to Come with Peace Plan,” *The Economic Times*, April 29, 2017, <https://economictimes.indiatimes.com/news/politics-and-nation/supreme-court-asks-jammu-and-kashmir-high-court-bar-association-to-come-with-peace-plan/articleshow/58424629.cms>.

occupation forces is an appropriate and legal response. Rather than address the state violence that was at issue, the Supreme Court conditioned the exercise of its powers to stop atrocity crimes on a bar association's ability to end mass civil disobedience protesting grave violations and atrocity crimes in IAJK.



Insha Malik, a 14-year old bystander (not participating in civil disobedience) maimed and blinded by Indian Central Reserve Police forces' indiscriminate firing of "pellet" shotguns (a "non-lethal" tool of "crowd control") on July 10, 2016. The Supreme Court has refused to ban the use of shotguns for "crowd control" in IAJK.

The Bar Association's case was sent back to the high court for resolution. On March 11, 2020, the high court again rejected the Bar Association's petition, following and applying the anti-justice, pro-impunity approach of the Supreme Court. In *J&K High Court Bar Association* (2020) the court noted that certain "unpleasant events" had occurred in IAJK—but, in the court's telling those events were that "on the guise of protests, the Security Personnel, their Camps and Police Stations are targeted by unruly crowds." The high court here is unconcerned with the killing and maiming of civilians it claims as citizens by forces responsible for grave violations and atrocity crimes over decades with total impunity. The court is instead concerned that

active-duty military units actively committing atrocity crimes are being "targeted" by unarmed civilians exercising their right of free assembly in defense of their human rights. For the court, Indian forces had to "necessarily use force as their self defense and for protecting public property. For dispersal of mob and maintenance of law and order." The court justified war crimes and crimes against humanity as follows: "Thus, it is manifest that so long as there is violence by unruly mobs, use of force is inevitable." Rather than defend human rights and justice, in IAJK the high court's purpose in *J&K High Court Bar Association* is to defend criminality and impunity.

The high court actually went further. It held that: "What kind of force has to be used at the relevant point of time or in a given situation/place, has to be decided by the persons in charge of the place where the attack is happening. This Court in the writ jurisdiction without any finding rendered by the competent forum / authority cannot decide whether the use of force in particular incident is excessive or not." Like in *Mian Abdul Qayoom* (2019), decided by the same court a month earlier, the court declared itself incompetent to question or substantively examine the executive's exercise of its authority in a case about fundamental rights—rather than provide oversight, the court defers wholly to the executive. This is legalization through the elimination of even the pretext of scrutiny and the blanket sanctioning of violations by a criminal executive—delivering complete impunity rather than complete justice.

c. Anuradha Bhasin (Persecution)

Indian authorities have deployed various means of collective punishment targeting Kashmiri Muslims in IAJK for decades, including curfews,¹⁸⁸ cordon and search

¹⁸⁸ "Annual Human Rights Review 2019," Jammu Kashmir Coalition of Civil Society, <https://jkccs.info/annual-human-rights-review-2019-2/>.

operations,¹⁸⁹ search and destroy operations,¹⁹⁰ reprisal mass killings of civilians,¹⁹¹ burning down entire neighborhoods and villages,¹⁹² sieges,¹⁹³ mass detention,¹⁹⁴ widespread, systematic torture,¹⁹⁵ rape,¹⁹⁶ gassing,¹⁹⁷ mass maimings (including through the indiscriminate shooting of unarmed, peaceful demonstrators), mass assault,¹⁹⁸ the use of human shields¹⁹⁹ and forced labor.²⁰⁰ These violations have broad-based impacts and result in myriad other violations. In recent years, Indian authorities have escalated their use of collective punishment²⁰¹ for defending human rights and

dissent in IAJK, including raids,²⁰² the destruction²⁰³ of personal property²⁰⁴ including homes,²⁰⁵ curfews, punishing people for the alleged beliefs or dissent of their relatives or associates, including terminating employment,²⁰⁶ harassment²⁰⁷ and cancelling²⁰⁸ travel documents²⁰⁹, and the suspension²¹⁰ of internet, mobile and other communications services.

International human rights experts, including those of the UN special procedures, have recognized that India's communications suspensions are a form of collective punishment²¹¹ against Kashmiris. In the

189 "Update of the Situation of Human Rights in Indian-Administered Kashmir and Pakistan-Administered Kashmir from May 2018 to April 2019," Office of the United Nations High Commissioner for Human Rights, July 8, 2019, https://www.ohchr.org/sites/default/files/Documents/Countries/IN/KashmirUpdateReport_8July2019.pdf.

190 "Torture: Indian State's Instrument of Control in Indian-administered Jammu & Kashmir," Association of Parents of Disappeared Persons and Jammu Kashmir Coalition of Civil Society, February 2019, <https://jkccs.info/wp-content/uploads/2019/05/TORTURE-Indian-State%E2%80%99s-Instrument-of-Control-in-Indian-administered-Jammu-and-Kashmir.pdf>.

191 "India Continuing Repression In Kashmir: Abuses Rise as International Pressure on India Eases," Human Rights Watch - Asia, Vol. 6, No. 8, August 1994, <https://www.hrw.org/sites/default/files/reports/INDIA948.PDF>.

192 Ibid.

193 "120 Days: 5th August to 5th December — A Report by APDP," Association of Parents of Disappeared Persons, 2019, <https://apdpkashmir.com/120-days-5th-august-to-5th-december-a-report-by-apdp/>.

194 "Report on the Situation of Human Rights in Kashmir: Developments in the Indian State of Jammu and Kashmir from June 2016 to April 2018, and General Human Rights Concerns in Azad Jammu and Kashmir and Gilgit-Baltistan," Office of the United Nations High Commissioner for Human Rights, June 14, 2018, <https://www.ohchr.org/sites/default/files/Documents/Countries/IN/DevelopmentsInKashmirJune2016ToApril2018.pdf>.

195 "Torture: Indian State's Instrument of Control in Indian-administered Jammu & Kashmir," Association of Parents of Disappeared Persons and Jammu Kashmir Coalition of Civil Society, February 2019, <https://jkccs.info/wp-content/uploads/2019/05/TORTURE-Indian-State%E2%80%99s-Instrument-of-Control-in-Indian-administered-Jammu-and-Kashmir.pdf>.

196 "First-Ever UN Human Rights Report on Kashmir Calls for International Inquiry into Multiple Violations," Office of the United Nations High Commissioner for Human Rights, June 14, 2018, <https://www.ohchr.org/en/2018/06/first-ever-un-human-rights-report-kashmir-calls-international-inquiry-multiple-violations>.

197 "Amnesty International submission to the Jammu and Kashmir Home Department," Amnesty International, March 30, 2013, <https://www.refworld.org/pdfid/5170f3c3d.pdf>.

198 "India: The Government Must End The Repression Of Rights In Jammu And Kashmir," Amnesty International, September 2, 2022, <https://www.amnesty.org/en/latest/news/2022/09/india-the-government-must-end-the-repression-of-rights-in-jammu-and-kashmir/>.

199 Hassan, Aakash and Hannah Ellis-Petersen, "Kashmir Tensions High after Deaths of Men 'Used as Human Shields,'" The Guardian, November 20, 2021, <https://www.theguardian.com/world/2021/nov/20/kashmir-deaths-human-shields-india-police>.

200 "Torture: Indian State's Instrument of Control in Indian-administered Jammu & Kashmir," Association of Parents of Disappeared Persons and Jammu Kashmir Coalition of Civil Society, February 2019, <https://jkccs.info/wp-content/uploads/2019/05/TORTURE-Indian-State%E2%80%99s-Instrument-of-Control-in-Indian-administered-Jammu-and-Kashmir.pdf>.

201 Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Special Rapporteur on the situation of human rights defenders, Chair-Rapporteur on the Working Group on Enforced or Involuntary

Disappearances, Special Rapporteur on the right to peaceful assembly and association, and Special Rapporteur on extrajudicial, summary or arbitrary executions, "UN rights experts urge India to end communications shutdown in Kashmir," Office of the United Nations High Commissioner for Human Rights, August 22, 2019, <https://www.ohchr.org/en/press-releases/2019/08/un-rights-experts-urge-india-end-communications-shutdown-kashmir>.

202 "India: Kashmiri Activist Held Under Abusive Law," Amnesty International, November 26, 2021, <https://www.amnesty.org/en/latest/news/2021/11/india-kashmiri-activist-held-under-abusive-law/>.

203 "Bi-annual HR Review: 229 killings, 107 CASO's, 55 internet shutdowns, 48 properties destroyed," Jammu Kashmir Coalition of Civil Society, 2020, <https://jkccs.info/bi-annual-hr-review-229-killings-107-casos-55-internet-shutdowns-48-properties-destroyed/>.

204 Javaid, Azaan, "Budgam Villagers Scared to Return after J&K Police 'Attack' Their Homes and Shops," The Print, May 15, 2020, <https://theprint.in/india/budgam-villagers-scared-to-return-after-jk-police-attack-their-homes-and-shops/421893/>.

205 Shah, Shafaq, "Srinagar Encounter Leaves Kashmiris Homeless In The Middle Of Coronavirus Pandemic," HuffPost, May 20, 2020, https://www.huffpost.com/archive/in/entry/srinagar-encounter-kashmir-nawakadal-gunfight-coronavirus_in_5ec4c9fac5b62cbfaa2f1d90.

206 Majid, Zulfikar, "Kashmir University Professor among Three Employees Terminated for 'Terror Links,'" Deccan Herald, May 13, 2022, <https://www.deccanherald.com/india/kashmir-university-professor-among-three-employees-terminated-for-terror-links-1108942.html>; Zargar, Anees, "J&K: 3 Employees Including Kashmir University PRO Sacked for Being 'Anti-State,'" NewsClick, July 17, 2023, <https://www.newsclick.in/jk-3-employees-including-kashmir-university-pro-sacked-being-anti-state>.

207 Suresh, Nidhi, "Orwellian India: How Kashmir Police Are Going after a Caravan Journalist for Doing His Job," NewsLaundry, June 10, 2022, <https://www.newslaundry.com/2022/06/10/orwellian-india-how-kashmir-police-are-going-after-a-caravan-journalist-for-doing-his-job>.

208 Singh Robin, Ravinder, "Long-Term Visas, OCI Cards of Those Indulging in Anti-India Activities Revoked," Zee News, October 26, 2021, <https://zeenews.india.com/india/long-term-visas-oci-cards-of-those-indulging-in-anti-india-activities-revoked-2405769.html>.

209 Ali, Jehangir, "Security Threat to India: Passports of 2 J&K Journalists – With No Criminal Cases – Suspended," The Wire, August 1, 2023, <https://thewire.in/media/passport-kashmir-journalists-suspended-security-threat>.

210 "Kashmir's Internet Siege," Jammu Kashmir Coalition of Civil Society, August 2020, <https://jkccs.info/report-kashmirs-internet-siege/>.

211 Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Special Rapporteur on the situation of human rights defenders, Chair-Rapporteur on the Working Group on Enforced or Involuntary Disappearances, Special Rapporteur on the right to peaceful assembly and association, and Special Rapporteur on extrajudicial, summary or arbitrary executions, "UN rights experts urge India to end communications shutdown in Kashmir," UN Human Rights Office of the High Commissioner, August 22, 2019, <https://www.ohchr.org/en/press-releases/2019/08/un-rights-experts-urge-india-end-communications-shutdown-kashmir>.

decade since 2012, Indian authorities imposed internet shutdowns in IAJK over 400 times.²¹² For many years, IAJK has been by far the most shutdown region in the world.²¹³ Such shutdowns are a systematic and widespread practice. Communications shutdowns are a form of collective punishment that results in myriad other violations, including of the right to free expression, various economic rights, the right to access education²¹⁴ and the right to adequate healthcare.²¹⁵ While there is a some debate internationally as to whether the right to internet is itself a fundamental right, denials of the right to internet that result in violations of other fundamental rights, like the right to free expression, are incontrovertibly violations of fundamental rights.²¹⁶ Notably, under Indian law, the right to internet has been acknowledged as a fundamental right.²¹⁷

The international crime of persecution is the intentional and severe deprivation of a fundamental right targeting a group. It is a crime against humanity if it is widespread or systematic. Indian' authorities' widespread and systematic denial of the right to internet in IAJK constitutes the crime against humanity of persecution.

On August 4, 2019, Indian authorities imposed on IAJK an internet shutdown that would last until February 6, 2021, for a total of 552 days.²¹⁸ In addition to the internet shutdown,

Indian authorities simultaneously cut off all other means of communication (including mobile services and landlines) and imposed curfews, criminalizing Kashmiris' exercise of their right to free assembly and free movement. Anuradha Bhasin, executive editor of *Kashmir Times* (a prominent, widely circulated, historic independent media operation in IAJK), filed an emergency petition to the Supreme Court to lift the communications bans, restore all communications in IAJK and ensure that the rights of journalists were safeguarded.²¹⁹

The Supreme Court did not rule on Bhasin's petition until January 10, 2020, over five months after her emergency petition was filed. In *Anuradha Bhasin* (2020), the Supreme Court noted that the government had suppressed the orders pursuant to which the shutdown in the State of J&K, ruling that the state's pretextual reasons for such suppression were "not a valid ground."²²⁰ The court quoted an American legal scholar saying: "there can be no greater legal monstrosity than a secret statute."

The fundamental rights that the Supreme Court considered in the case were the right to free movement, the right to free speech, the right to work and the right to a free press. Applying a test requiring legality, reasonableness and proportionality (which means that any restriction on a fundamental right has to be minimally restrictive and necessary to achieve a legitimate policy goal), the Supreme Court ruled that "suspending internet services indefinitely is impermissible" and ordered Indian authorities to "conduct a periodic review" of their orders restricting

212 "India's Shutdown Numbers," Internet Shutdowns Tracker, updated October 11, 2023, <https://internetshutdowns.in/>. See also "India snapped internet 690 times since 2012, Jammu Kashmir tops with 418 internet shutdowns: Report," The Kashmiriyat, Dec. 26, 2022, <http://thekashmiriyat.co.uk/india-snapped-internet-690-times-since-2012-jammu-kashmir-tops-with-418-internet-shutdowns-report/>.

213 Bilal Hussain, "Kashmir Registers Highest Number of Internet Restrictions Globally," Voice of America, Feb. 11 2023, <https://www.voanews.com/a/kashmir-registers-highest-number-of-internet-restrictions-globally-6958516.html>; "Kashmir at epicentre of India's spate of internet shutdowns," RFI, March 4 2023, <https://www.rfi.fr/en/international/20230304-kashmir-at-epicentre-of-india-s-spate-of-internet-shutdowns>.

214 "120 Days: 5th August to 5th December," Association of Parents of Disappeared Persons, 2019, https://apdpkashmir.com/ebmedia/sitename_eb/wp-content/uploads/2019/12/APDP-Report-9.12.19.pdf

215 Ibid.

216 Special Rapporteur on freedom of opinion and expression and Special Rapporteur on the situation of human rights defenders, "India must restore internet and social media networks in Jammu and Kashmir, say UN rights experts", 11 May 2017. Available from <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21604>.

217 Anuradha Bhasin vs Union Of India, January 10, 2020, (CIVIL) NO. 1031, <https://indiankanoon.org/doc/82461587/>.

218 "India's Shutdown Numbers," Internet Shutdowns Tracker, updated October 11, 2023, <https://internetshutdowns.in/>. See also Ahmer Khan and Billy Perrigo, "What Life

Is Like Inside the World's Longest Lockdown," Time, May 5 2020, <https://time.com/5832256/kashmir-lockdown-coronavirus/>.

219 "Kashmir: Curfew-Like Restrictions Imposed on Movement Of People" [India Today, 2020] <https://www.indiatoday.in/india/story/jammu-and-kashmir-curfew-section-144-imposed-1577218-2019-08-05>. See also, Anuradha Bhasin v. Union of India and Others., Supreme Court of India, dated 16th August 2019, WP(Civil)No. 1031/2019, <https://indiankanoon.org/doc/82461587/>.

220 Anuradha Bhasin v. Union of India and Others., Supreme Court of India, dated 16th August 2019, WP(Civil)No. 1031/2019 <https://indiankanoon.org/doc/82461587/>. Bhasin's petition was one of several on the same or similar subject matter joined by the Supreme Court and dealt with in one judgment. Another was Ghulam Nabi Azad vs Union of India and another [2020] Supreme Court of India, Writ Petition [Civil] no. 1164 of 2019 [Supreme Court of India].

fundamental rights. The Supreme Court did not provide a remedy, lift the then-ongoing internet suspension in Kashmir (which would continue for another 13 months) or defend the people of IAJK's fundamental rights. Instead, like the courts in *Mian Abdul Qayoom* (2019) and *J&K High Court Bar Association* (2020), the Supreme Court provided extensive legal reasoning and a pretextual process to effectively defer to the Indian executive and thereby legitimate Indian authorities' free and ongoing violation of the people of IAJK's fundamental rights. In the context of IAJK, the Supreme Court provided legal cover to facilitate and legitimate the crime against humanity of persecution.

In *Anuradha Bhasin*, like the court in *J&K High Court Bar Association*, the court's propagandistic framing of the context of IAJK is critical to its approach. The Supreme Court projects imperialist exoticization on IAJK as a place "cherished in our heart as a 'Paradise on Earth'" in order to then identify the problem in IAJK as anti-colonial, pro-democracy resistance (and not India's illegal colonization, grave human rights violations and atrocity crimes), or what the Supreme Court calls "violence and militancy." At the outset of its opinion, the Supreme Court declares that it "will not delve into" what it calls "the political propriety" of the extreme, prolonged lockdown/shutdown at issue in the case, an extravagant program of collective punishment resulting in the deprivation of fundamental rights to an entire population and constituting the crime against humanity of persecution. For the Supreme Court, this "decision" is "best left for democratic forces to act on." This despite the fact that the people of IAJK were and are unrepresented and that Indian rule in IAJK has been one of longstanding colonial domination with the specific purpose of suppressing and destroying democratic forces, with the "decision" at issue marking yet another escalation of that domination, and the Supreme Court itself having played a critical role in establishing and legitimating that domination.

IX. Coddling India's Collective Conscience: The Supreme Court's Jurisprudence Of Condoning Violence Targeting Kashmiris

“[T]he collective conscience of the society will only be satisfied if capital punishment is awarded to the offender.”

*State (N.C.T. Of Delhi) vs Navjot Sandhu@ Afsan Guru
(August 4, 2005)*

Disinformative, propagandistic framing has been a valuable tool in the Supreme Court's legitimization of violations targeting Kashmiris Muslims and its legalization of impunity and injustice. Recent cases discussed in this report demonstrative of this phenomenon include *Anuradha Bhasin* (2020) and *J&K High Court Bar Association* (2020). The Supreme Court has in other cases gone further—promoting hate targeting Kashmiri Muslims by officially condoning and justifying such violence.

a. Maqbool Bhat

Maqbool Bhat was a life-long activist for the rights and freedoms of the people of IAJK.²²¹ He has been a totem of the anti-colonial, pro-democracy struggle in IAJK for over a half century. In 1958, Bhat evaded arrest for his student activism in IAJK seeking the realization of a UN Security Council-mandated plebiscite on the political future of the Princely State by going underground and fleeing to Pakistan-administered Jammu and Kashmir (hereafter, PAJK). While in exile from IAJK, Bhat studied anti-colonial liberation struggles, particularly in Algeria, Palestine and Vietnam, and developed a broader vision for the national liberation of the people of all of the territories of the Princely State. He came to

believe that armed struggle was necessary in anti-colonial struggles for national liberation. He also believed that the people of the Princely State had to fight that struggle themselves.²²² In August 1965, Bhat formed the Jammu Kashmir National Liberation Front (hereafter, JKNLF) to pursue “all forms of struggle including armed struggle to enable the people of Jammu Kashmir State to determine the future of the State as the sole owners of their motherland.”²²³

After organizing in PAJK and IAJK, a JKNLF cadre led by Bhat pursued armed resistance against Indian colonial rule in IAJK in 1966. As the JKNLF-led armed uprising started to grow, Indian intelligence agents surrounded Bhat and a JKNLF platoon on September 14, 1966. In the ensuing battle, several of Bhat's comrades were injured and one (Tahir Aurangzeb) was killed. Eventually, hundreds of other JKNLF activists were arrested in IAJK. Bhat and two of his close associates (Kala Khan and Mir Ahmed) were convicted by an Indian court in IAJK in August 1968 for being enemy (Pakistani) agents in connection with the death of an Indian intelligence officer (Amar Chand) allegedly killed in the JKNLF uprising. Bhat was awarded a death sentence.²²⁴

²²¹ Bhat was born on February 18, 1938, in Trehgam, Kupwara, Kashmir. As a student a student at St. Joseph's School and College, Bhat was an activist in the Plebiscite Front Movement, the pre-eminent movement in IAJK seeking the exercise of the people of IAJK's right to self-determination. Bhat fled an official crackdown against rights activists in IAJK and crossed the Line of Control in to Pakistan-administered Kashmir. After his experience of civil disobedience and being forced into exile, and the longstanding failure of the Indian government to recognize the rights of the people of IAJK, Bhat founded the Jammu and Kashmir National Liberation Front, which sought to resist and end India's occupation of IAJK including through armed struggles.

²²² “Study any revolution and you'll learn that it's the oppressed themselves who should be at the forefront and unless they don't stand up and fight nothing would happen,” <https://theprint.in/past-forward/maqbool-bhat-kashmiris-first-radical-separatist-hanged-by-indira-after-diplomats-killing/363201/>.

²²³ “In Prayers- MAQBOOL- Ward Number 18, Tihar Jail,” *The Kashmiriyat*, February 11, 2021, <https://thekashmiriyat.co.uk/in-prayers-maqbool-ward-number-18-tihar-jail/>.

²²⁴ At trial, when asked if he had anything to say in his defense, Bhat said: “I have no problem in accepting the charges leveled against me, except one. I am not an enemy

Bhat escaped imprisonment from a well-known torture center in IAJK (Bagh-e-Mehtab) in December 1968 with two comrades and again fled to PAJK. Bhat was subsequently arrested and imprisoned by Pakistani authorities for being an enemy (Indian) agent.²²⁵ Bhat eventually won his release from Pakistani prison. Bhat returned to IAJK in 1976, again seeking to lead an armed uprising against Indian colonial rule. He was again arrested by Indian authorities, who imprisoned him in Tihar Jail, a maximum-security prison in New Delhi, India. Bhat petitioned the Supreme Court for a re-trial on the grounds that his original trial was unfair and that the court had made various procedural errors in convicting him.

While his petition was still pending, on February 3, 1984, Ravindra Mhatre, an Indian diplomat, was abducted in Birmingham, England. The abductors demanded the release of Maqbool Bhat. On February 5, 1984, United Kingdom police found a corpse that they identified as Mhatre's. In retribution, the Indian government, led by its Prime Minister and Home Minister, immediately sought to have Bhat killed.²²⁶ A legal defense team sought to prevent Bhat's execution through a Supreme Court petition because Bhat's execution would violate applicable Indian law (which, among other things, required independent confirmation by a high court in the case of a death sentence)²²⁷ as well as longstanding legal norms; also, Bhat's petition

challenging his conviction on constitutional grounds was still pending. Without following Indian law, the Supreme Court denied the petition. Bhat was hanged in secret at Tihar Jail on February 11, 1984.²²⁸ His family members were not notified of his execution or allowed to see him before or after he was killed. His remains were forcibly buried within Tihar Jail. For years, Bhat's family and a symbolic open grave in IAJK have awaited Bhat's still-unreturned remains.

The Supreme Court's sanctioning of Bhat's killing violated his rights to a fair trial and due process, as well as his right to life. The Supreme Court did so in coordination with the Indian executive as a retribution killing or an honor killing, which are illegal purposes and a fundamental violation of the rule of law. It is not even clear (and was not at the time) that those responsible for Mhatre's death were from the JKNLF. Bhat himself condemned Mhatre's killing. The retribution here is against an outspoken Kashmiri freedom fighter and representative of Kashmiris' democratic aspirations—it is retribution against Kashmiris' aspiration to rights. The honor being protected by the Supreme Court is that of a nebulous Indian nationalism (this "rationale" is often characterized as "assuaging public anger"²²⁹). The Supreme Court's justice is vigilante justice, criminal in both its intent and its exercise of power. The effect of the Supreme Court's conduct here is to condone violence against a marginalized, violated group—Kashmiri Muslims—in retribution for their resistance to Indian violations, and to condone violence against Kashmiri Muslims to protect India's (imagined) "honor."

agent (agent of Pakistan) but I am the enemy itself. Have a good look at me and recognize me well, I am an enemy of your illegal rule in Kashmir... There is no rope that can hang Maqbool." <https://thekashmiriyat.co.uk/in-prayers-maqbool-ward-number-18-tihar-jail/>.

225 This was in connection with his alleged role in the 1971 hijacking of an Indian Airlines flight. Bhat's statements before the Pakistani court include: "[H]istory also is witness to the fact that in this battle between truth and falsehood, it is we, the oppressed, who have always emerged victorious. It is we, the people, who demolish these edifices of oppression... If the evolution of civilization, democracy, and freedom was to be prevented by the existing judicial or administrative system no revolution would have taken place from the beginning of history." See <https://theprint.in/past-forward/maqbool-bhat-kashmiris-first-radical-separatist-hanged-by-indira-after-diplomats-killing/363201/>.

226 Meraj, Zafar, "Mohammad Maqbool Butt: An Untold Story - I," Kashmir Times, October 2, 2016, <http://www.kashmirtimes.in/newsdet.aspx>.

227 Section 366 of Indian Code of Criminal Procedure (CrPC): Sentence of death to be submitted by Court of session for confirmation. (1) When the Court of Session passes a sentence of death, the proceedings shall be submitted to the High Court, and the sentence shall not be executed unless it is confirmed by the High Court.

228 After his death warrant was read to him on the morning of his execution, Bhat was asked if he wanted to make a will. He left a message instead: "There will be many Maqbool Bhat's that will come and go, but the freedom struggle in Kashmir should continue." <https://thekashmiriyat.co.uk/in-prayers-maqbool-ward-number-18-tihar-jail/>. His last words before being hanged, other than the Muslim testimony of faith, was reportedly, "Oh my homeland you will be free for certain, my last salam to you." <https://www.thekashmirdiscourse.com/maqbool-bhats-execution-revelations-by-ghulam-muhammad-mir/>.

229 Shukla, Srijan, "Maqbool Bhat, Kashmir's First Radical Separatist, Hanged by Indira after Diplomat's Killing," ThePrint, February 11, 2020, <https://theprint.in/past-forward/maqbool-bhat-kashmiris-first-radical-separatist-hanged-by-indira-after-diplomats-killing/363201/>.

It is important to recall that India, as the illegal occupier and colonizer, is the violator who is acting illegally and the victim, Bhat, an anti-colonial freedom fighter, is acting legally and morally.²³⁰ As a combatant from an organized anti-colonial resistance movement captured and held by his enemy, Bhat was a prisoner of war under international humanitarian law.²³¹ Under international humanitarian law, prisoners of war must be humanely treated and causing the death of a prisoner of war (even by an act of omission) is a serious violation of international humanitarian law. Bhat was not humanely treated. He was proactively executed and in retribution for an act in which he took no part. His execution was a war crime. The Supreme Court directly facilitated and abetted that war crime. In fact, Bhat's killing was only one of several war crimes committed by the Indian government against him. International humanitarian law requires people accused of criminal offences to be provided due process consistent with international rules and norms and prohibits reprisals, collective punishment and the non-return of remains (a violation which remains unremedied almost forty years later).²³²

b. Afzal Guru²³³

230 The indigenous people of IAJK have a right to resist colonization and occupation in pursuit of self-determination by all available means including armed struggle. See the Declaration on Principles of International Law concerning Friendly Relations and Co-Operation among States in accordance with the Charter of the United Nations, General Assembly Resolution 2625 (XXV) of October 24, 1970, <http://www.un-documents.net/a25r2625.htm>, United Nations General Assembly Resolution 37/43 of December 3, 1982, paragraph 2, <https://digitalibrary.un.org/record/40572?ln=en>, and World Conference on Human Rights, Vienna Declaration and Programme of Action, June 25, 1993, Article 2, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/Vienna.aspx>.

231 Under Article 4 [A][2] of the Third Geneva Convention, prisoners of war are "Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfill the following conditions: a) that of being commanded by a person responsible for his subordinates; b) that of having a fixed distinctive sign recognizable at a distance; c) that of carrying arms openly; d) that of conducting their operations in accordance with the laws and customs of war."

232 Under Article 34 of Additional Protocol I of the Geneva Conventions, states must "facilitate the return of the remains of the deceased and of personal effects to the home country upon its request, or unless that country objects, upon the request of the next of kin." [Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), Geneva, 8 June 1977, Article 34.

233 The factual details in this Section IX(b) [Afzal Guru] are drawn from various public sources as this case has been widely written about, although different sources provided different details. See Arundathi Roy, *The Hanging of Afzal Guru and the Strange Case of the Attack on the Indian Parliament* (New Delhi, 2013), Amnesty

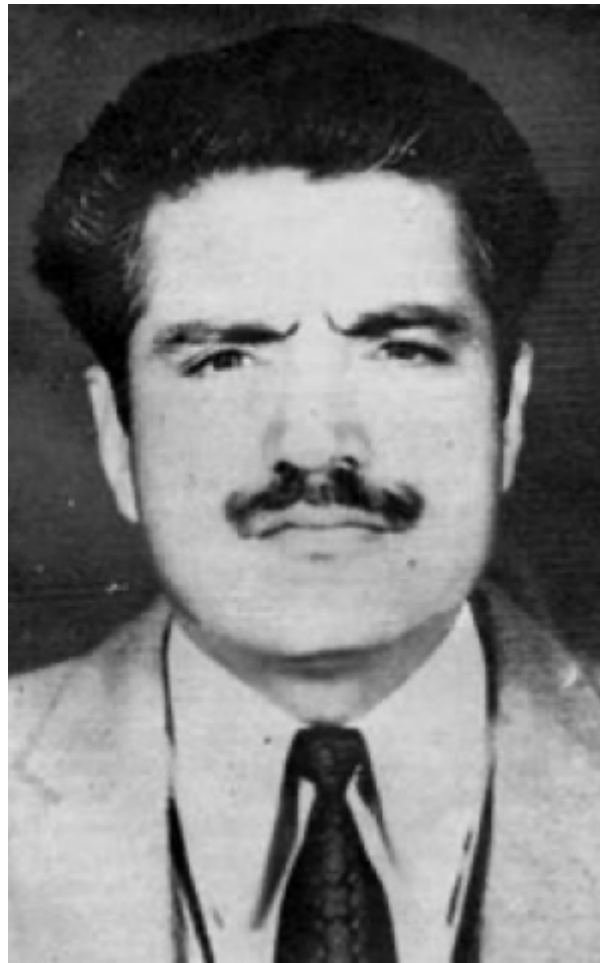
At approximately 11:30 AM New Delhi time on December 13, 2001, five armed men in a white Ambassador automobile entered the heavily fortified Indian Parliament complex in New Delhi, India. They exchanged gunfire with security agents, killing nine people and injuring sixteen. All five men were killed. Indian politicians and media attributed responsibility for the attack to armed groups operating in the State of J&K, namely Lashkar-e-Tayaba and Jaish-e-Mohammed. No public inquiry into the attack was ever conducted and the identity of those killed and the organization(s) responsible was never credibly established.

Immediately after the attacks, a number of Kashmiri Muslims were arrested for alleged involvement in a conspiracy to attack the Indian Parliament. Among them were Syed Abdul Rahman Geelani, Muhammed Afzal Guru, Afzal Guru's cousin, Shaukat Hussain Guru, and Shaukat's wife, Afzan. Geelani was arrested on December 14, 2001 in New Delhi. Afzal and Shaukat Guru were arrested on December 15, 2001 in Srinagar. Delhi police claimed the four accused were co-conspirators who masterminded the attack and provided material support to the attackers. Various Indian politicians and media outlets conducted a public disinformation campaign, declaring the four accused terrorists, responsible for the attack and deserving of death. The accused were extensively tortured in prison. On December 21, 2001, Indian police finally extracted confessions from Afzal and Shaukat Guru through torture and coercion (including threats against their families), which then formed the basis of the prosecution case against the alleged co-conspirators for waging war against India and

International, India: New Execution Points to Worrying and Regressive Trend [2013], Arundathi Roy, *The Hanging of Afzal Guru is a Stain on India's Democracy*, The Guardian, February 10, 2013, <https://www.theguardian.com/commentisfree/2013/feb/10/hanging-afzal-guru-india-democracy> and Shujaat Bukhari, *How Afzal Guru's hanging renewed militancy in Kashmir*, The Friday Times, February 16, 2018, <https://www.thefridaytimes.com/how-afzal-gurus-hanging-renewed-militancy-in-kashmir/>. See also, "Beyond the Fate of Afzal Guru: 13 Unanswered Questions Regarding 2001 Parliament Attack," Maktoob Media, February 9, 2020, <https://maktoobmedia.com/india/beyond-the-fate-of-mohammed-afzal-13-unanswered-questions-regarding-2001-parliament-attack/>.

“Those who respond to their conscience and identify themselves with the standard bearers of truth covet no rewards and desire no praise. This long and trying struggle sees many crests and troughs. The passage of time and unfavorable circumstance may affect its intensity but cannot put an end to it. It is the greatest duty of every upholder of truth to continue this struggle in all intensity. Negligence can only lead to a state where humanity loses the purpose and meaning of existence and the current of noble deeds that has sustained prophets and revolutionized human life is slowed...As long as the gloomy night of oppression hovers over us, we have to go on illuminating the scaffolds and gallows with our heads.”

— Maqbool Bhat, Kashmiri armed resistance fighter and prisoner-of-war, writing from Tihar Jail, Delhi, India awaiting his execution. The Indian government, with the approval of the Supreme Court, killed him by hanging on February 11, 1984 and forcibly buried his remains at Tihar Jail.





“Bismillahi Rahman ar-Rahim. Respected members of my family and the Believers, As-salaam Alaykum: My gratitude to Allah, The Pure, because He chose me for this destiny. And, I also congratulate you, the Believers, because we all stayed with truth and righteousness. May truth and righteousness be our destiny in the afterlife as well. My request to the members of my family is that instead of harboring regret, respect the destiny I met. Allah is The Protector and The Witness over you all. Allah Hafiz.”

— Afzal Guru, Kashmiri victim framed for a crime he did not commit, writing from Tihar Jail, Delhi, India awaiting his execution. The Indian government, with the approval of the Supreme Court, killed him by hanging on February 9, 2013 and forcibly buried his remains at Tihar Jail.

conspiracy to commit murder.²³⁴ Ultimately, all of the co-defendants in the alleged conspiracy were acquitted except Afzal Guru.

Guru was specifically targeted for arrest, arrested and implicated in the case by State of J&K police personnel who had long harassed him, had a vendetta against him and had manufactured and planted the circumstantial evidence that purportedly linked him to the case. He was framed in a manner that is consistent with thousands of Kashmiris coerced into doing the bidding of Indian authorities with limitless power over them exercised with total impunity, a fact that was known throughout his ordeal and publicly confirmed in 2020.²³⁵ Guru was convicted through fast-tracked proceedings in a special, anti-terror court with limited procedural safeguards constituted under the Prevention of Terrorism Act (hereafter, POTA), a counter-terrorism law which expanded police powers, reduced the due process rights for accuseds and authorized, among other things, extended detentions without charges being brought, the discarding of the presumption of innocence (by placing the burden of proof on the accused) and the admissibility (as evidence in court) of confessions made to the police through torture or coercion. Throughout the proceedings, the court, and the Indian state, demonstrated manifest bias against Guru. The police investigation in his case was riddled with irregularities. The police fabricated key evidence. The police failed to produce critical evidence upon which the prosecution's case was built. The court improperly admitted and improperly used evidence. The court permitted the improper questioning of witnesses. Despite Guru's requests for counsel, he was not provided the effective assistance of counsel. Guru had no representation at times during his trial. When representation was

appointed by the state, that counsel was ineffective (for example, failing to summon any witnesses or cross-examine prosecution witnesses) and openly antagonistic towards him (even refusing to visit Guru in jail).²³⁶ Guru was also not allowed to cross-examine any witnesses.

Despite the lack of a case against Guru and the clear violations that had been committed against him by various Indian executive and judicial authorities, Guru's conviction was affirmed by a high court and then by the Supreme Court in 2005.²³⁷ In affirming a double death sentence for Guru, the Supreme Court noted that the only evidence against Guru (itself manufactured) was circumstantial and that there was no evidence that he was affiliated with any terrorist organizations. Still, according to the Supreme Court, "The incident, which resulted in heavy casualties, had shaken the entire nation and the collective conscience of the society will only be satisfied if the capital punishment is awarded to the offender."

The Indian government scheduled the execution of Afzal Guru by hanging at Tihar Jail on October 20, 2006. The intended date and venue of Guru's killing were thick with symbolic significance. In planning the killing of Afzal Guru, Indian authorities projected domination and offense to Kashmiri Muslims. Guru would be executed by hanging in Tihar Jail, where Bhat's remains are still captive, echoing the honor killing of Maqbool Bhat 22 years earlier. Guru's hanging was scheduled for last Friday and 27th day of Ramadan, *Jummat-ul-Widah* and the day of *Laylat-ul-Qadr*, a day of profound spiritual significance and heightened religious feeling among Kashmiri Muslims.

234 See, e.g., "I Hope My Forced Silence Will Be Heard," Outlook India, February 3, 2022, <https://www.outlookindia.com/website/story/i-hope-my-forced-silence-will-be-heard/225472>.

235 Ganai, Naseer, "Will Be Treated, Probed Just As Any Other Militant": J&K Police On Arrested Officer Davinder Singh," Outlook India, February 14, 2022, <https://www.outlookindia.com/website/story/india-news-will-be-treated-probed-just-as-any-other-militant-jk-police-on-arrested-officer-davinder-singh/345597>.

236 Regarding his lawyer, Afzal Guru wrote "The fact remains that I did not sign any vakaltname [document agreeing to representation by an attorney] in favor of Mr. Neeraj Bansal who himself was not willing to defend me and which fact also came on record. Mr. Neeraj Bansal was kept under the compulsion to 'assist the court' and assisting the court does not mean 'defending the accused'. The Supreme Court held no prejudice was caused to me even though I did not have a lawyer to represent me and my lawyer at one point of time told the court that he did not wish to represent me."

237 State (N.C.T. Of Delhi) vs Navtej Sandhu@ Afsan Guru (August 4, 2005).

Legal interventions by Guru's family delayed his execution. The delay in killing him was widely condemned in India as an affront to India as a nation. BJP leaders were among those most vocal in such public condemnations. Illustrating the common logic of this viewpoint, Prakash Javdekar, a BJP spokesperson, was quoted at the time as saying "We appeal that there should be no waiving of the death sentence. It would be like giving in to the militants. The government should not surrender to the militants." The BJP called for an immediate execution—a key slogan in their 2009 election campaign: "Our nation is ashamed because Afzal is still alive."

Guru was hanged on February 9, 2013. Like Maqbool Bhat, Guru was hanged in secret in Tihar Jail. His family members were not notified of his execution or allowed to see him before or after he was killed. His remains were forcibly buried within Tihar Jail. For years, Guru's family and a symbolic open grave in IAJK have awaited Guru's still-unreturned remains. When he was killed, Guru, a framed and innocent Kashmiri Muslim man, had been held in solitary confinement for 12 years. Despite being the 28th person in line for execution at the time, Guru's killing was fast-tracked and clemency appeals were rejected.

His hanging was widely celebrated by Indian political parties, media organizations and the general public as a victory for democracy and a triumph of the rule of law. After his execution became public, Indian authorities imposed a curfew in Kashmir to prevent protests. State of J&K police fired at protestors, injuring 36. Pro-self-determination activists in IAJK were rounded up *en masse* and arbitrarily arrested without charge. In Delhi and other Indian cities, Kashmiris protesting Guru's hanging were attacked by *Hindutva* groups and arbitrarily detained by police. Narendra Modi, then Gujarat's Chief Minister and a leader of the BJP, tweeted "better late than never."

The Supreme Court's sanctioning of Guru's killing violated all principles of justice and morality, including his rights to a fair trial and due process and his right to life. This is the judicial lynching and intentional killing—the murder—of an innocent man who was the repeated, longstanding victim of grave violations (including harassment, torture, illegal arrest and illegal imprisonment) by Indian authorities. Instead of offering Guru remedy for the violations committed against him, the Supreme Court explicitly participated in his lynching, sanctioning murder in order to satisfy the hate-driven bloodlust of India's "collective conscience." This is an incredibly obscene exercise of judicial power, criminal in both its intent and exercise, and an extraordinary degree of depravity even by the standards of the Supreme Court. Like in the Maqbool Bhat case, the effect of the Supreme Court's conduct here is to condone violence against a marginalized, violated group—Kashmiri Muslims. But unlike in the Maqbool Bhat case, there is no apparent retribution for Kashmiri Muslims' resistance to Indian violations. Instead, the intent is to validate the demonization and widespread organized hate targeting Kashmiri Muslims in India and to serve and feed militant, ethnonationalist, Hindu supremacist hate in India for which the Kashmiri Muslim is a useful scapegoat.

The knowingly false claim made against Guru by the Indian authorities who framed him was that he was part of a conspiracy to commit murder. The crime of conspiracy is an agreement by two or more persons to commit a crime, in this case murder. Despite official, police, judicial and media machinations and the deployment of extensive state and media resources to frame four rightless, marginalized, demonized Kashmiri Muslims for a crime they did not commit, at the end Guru was alone. The alleged "conspiracy" for which he was framed did not even have the co-conspirator necessary to form a conspiracy. Afzal Guru was, however, actually involved in a murder conspiracy—the one that resulted in

his killing. In that murder conspiracy, the Supreme Court was a critical co-conspirator. The Supreme Court's co-conspirators included the Indian executive (including through its military and police in IAJK and India), Indian politicians (led by the BJP), Indian media (broadly) and other parts of the Indian judiciary.

c. Wandhama and Chattisinghpura

In the late 1990s, the phenomenon of “unidentified gunmen” responsible for sensational (but unclaimed) acts of brutality targeting non-locals, Sikhs or Hindus in IAJK emerged as a feature of the violence in IAJK. Section VII(a) of this report includes a description of the facts around the Chattisinghpura Massacre. That massacre, in which the victims were members of the Kashmiri Sikh community, followed an earlier massacre that set the pattern of these infrequent, discontinuous episodes of violence. Such incidents typically took place at moments of increased scrutiny of Indian government policies in IAJK. They were endlessly covered by Indian media (unlike the frequent, systematic and widespread killings of Muslim civilians by Indian state and state-sponsored forces, which received scant media attention) and became central data points for Indian government disinformation campaigns around the purported problem of “Islamic terror” in IAJK. Despite loud calls from Kashmiri civil society for a full and impartial investigation and transparent accountability, there was none. At the Indian state's behest, in a reality it stage-managed and controlled, there was no clarity on what happened and no accountability. But with the narrative scales structurally tipped inordinately in India's favor, India's narrative of “Islamic terror” in Kashmir was served and prevailed.

In January 1998, two years before the Chattisinghpura Massacre, in a bid to cement “normalcy” in the State of J&K, the J&K Government announced a 28 billion Rupee rehabilitation program for Pandits (ethnically Kashmiri Brahmins) who migrated from

Kashmir after 1989 (including a financial incentive for each family, a grant for housing, an employment allowance, an employment incentive program, a loan waiver program and a transition settlement program). On January 25, 1998, a delegation of Pandits arrived in Srinagar, Kashmir to explore returning to Kashmir. That night was *Laylat-ul-Qadr*, a night of profound spiritual significance and heightened religious feeling among Kashmiri Muslims, and the Muslim population of Wandhama, Ganderbal, Kashmir was participating in congregational night prayers. That same night, 23 of the 24 Pandit residents of the village were killed.²³⁸ No one claimed responsibility for the massacre. Indian government officials said “unidentified gunmen” were responsible. Eyewitness accounts reported the killers appeared to be Indian Army personnel.²³⁹ As in all cases of mass killings in IAJK, the killings were widely condemned in IAJK, including by civil society, the political leadership of the self-determination movement and the leadership of the armed anti-colonial resistance. Kashmiri civil society and political leaders demanded an impartial investigation.²⁴⁰ Unlike most cases of mass killings or massacres in IAJK, an official investigation actually did occur. But, as is typical for such investigations (whenever they have occurred in IAJK), the investigation went nowhere and was officially closed in 2008, purportedly for lack of evidence. In the cases of both the Chattisinghpura and Wandhama Massacres, despite several pleas from Kashmir civil society and victims' representatives seeking the

238 Like thousands of Pandits, this community had continued to live in their homes in Kashmir despite the Indian government's war on the Kashmiri anti-colonial, pro-democracy movement. For a detailed account of this massacre, see, Handoo, Bilal, “21 Years Later, Wandhama Massacre's 'Untraceable' Closure Still Evokes Conflicting Memories,” Free Press Kashmir, January 28, 2019, <https://freepresskashmir.news/2019/01/28/21-years-later-wandhama-massacres-untraceable-closure-still-evokes-conflicting-memories/>. See also Haley Duschinski, “Survival Is Now Our Politics”: Kashmiri Hindu Community Identity and the Politics of Homeland, *International Journal of Hindu Studies* (1998).

239 Raafi, Muhammad, “Government Investigation in Wandhama Massacre was Flawed: Pandit Body,” KashmirLife, January 26, 2016, <https://kashmirlife.net/government-investigation-in-wandhama-massacre-was-flawed-pandit-body-95217/>.

240 See, e.g., Jaleel, Muzamil, “Why Kashmiris Want a Fair Probe into the Killings of Pandits, Prosecution of Guilty,” *The Indian Express*, August 8, 2017, <https://indianexpress.com/article/explained/why-kashmiris-want-a-fair-probe-into-the-killings-of-pandits-prosecution-of-guilty-4786855/>.

Supreme Court's intervention in order to conduct a full and impartial investigation, the Supreme Court chose not to intervene.

The Supreme Court's power to take *suo moto* cognizance of cases and order complete, transparent and impartial investigations could have satisfied calls for justice and accountability in these cases and promoted the rule of law. A proper legal intervention would have also countered the demonization, scapegoating and organized hate targeting Kashmiri Muslims which has facilitated and encouraged violations against that group, and impunity for those violations, for decades. Instead, the Supreme Court has ensured no action was taken and that the Indian state's promotion of hate through the failure to investigate, suppression of information, denial of access to justice and promotion of disinformation prevailed unchallenged.

In the cases described in this Section, the Supreme Court exercised its authority to promote hate and condone violence targeting Kashmiri Muslims. In the cases of *Maqbool Bhat* and *Afzal Guru*, the Supreme Court acted in an overtly criminal way to execute a Kashmiri Muslim in the service of the Indian government's militant, ethnonationalist, supremacist agenda in IAJK. In the cases of the Wandhama and Chattisinghpura Massacres, the Supreme Court ensured that the Indian government's suspected involvement in politically expedient mass killings was not scrutinized and that, instead, the Indian government's organized hate and disinformation promoting the demonization of Kashmiri Muslims and the anti-colonial, pro-democracy movement in IAJK (and its impunity for violations) was unchallenged.

X. Apex Lawfare

Section VI of this report describes the violation and crime of arbitrary detention in IAJK as paradigmatic of India's treatment of IAJK—the denial liberty, fair process and the rule of law through lawfare. Lawfare describes law as a weapon of war or law as a mechanism or process to deny rights rather than to protect them. Section II of this report describes the role of the Supreme Court in India's constitutional democratic structure—it is India's apex court with a mandate to ensure complete justice is done and the power to be the ultimate arbiter of Indian law. Through a diverse range of cases, some in which the Supreme Court intervened and others in which it refused to, Sections III through IX of this report describe and explicate facets of the Supreme Court's apex lawfare against IAJK and its people.

At this writing, the Supreme Court's judgement is imminently expected on various emergency petitions from 2019 challenging the "abrogation" of Article 370 (and related or subsidiary legal maneuvers imposed by the Indian government on IAJK in 2019, especially the "abrogation" of Article 35A of India's constitution and the passage of The Jammu and Kashmir Reorganisation Act) described in Section V of this report. As demonstrated in Section III of this report, the Supreme Court's exercise of jurisdiction over IAJK and Article 370 are themselves illegal and invalid. The questions of the "restoration" of Article 370 (and the "restoration" of Article 35A and The Jammu and Kashmir Reorganisation Act) are nonsensical distractions. The essential problem in IAJK is the Indian government's denial of people's rights and the annexation and colonization of IAJK in the service of those violations and its colonial domination. The Supreme Court's exercise of jurisdiction and Article 370 were primary (and legally invalid) tools in the creation and successful

implementation and development of those violations. The Supreme Court and Article 370 are an essential part of the problem of grave illegality and impunity in IAJK. They are not a solution or part of a solution to any problem in IAJK.

As Section V of this report describes, it is through Article 370 that India legitimated, institutionalized and expanded its annexation and colonial domination of IAJK. The August 2019 (and subsequent) developments in India's illegal laws imposed on IAJK were driven by an ideological project—*Hindutva*—whose proponents have sought to achieve through the "total integration" of IAJK with India the political, social and cultural disintegration of the Princely State, totalitarian domination over the people of IAJK, the complete economic and political disempowerment of (the already long-disempowered) Muslims of IAJK and the acceleration of the process of forced demographic change in favor of non-local Hindus which they started in earnest in 1947.²⁴¹ Irrespective of what the Supreme Court now does (in responding to emergency petitions four years after they were filed) or does in future, the *Hindutva* project has achieved what it sought to with respect to IAJK and its people. The Supreme Court has also enabled and achieved the illegalities and criminality that it sought, irrespective of whether it attempts to garb itself in the trappings of legality and legitimacy.

As discussed in the *Prem Nath Kaul* case in Section V of this report, ownership of immovable property is a foundational question both of post-Partition politics in IAJK and in

241 See, e.g., "Mookerjee to Modi: How the RSS Dream of 'integrating' Kashmir Was Fulfilled," Business Standard, August 5, 2019, https://www.business-standard.com/article/current-affairs/how-modi-fulfilled-rss-dream-of-kashmir-s-integration-119080501139_1.html; Bhat, Idris, "New Delhi's Demographic Designs in Kashmir," Foreign Policy, August 16, 2019, <https://foreignpolicy.com/2019/08/16/new-delhis-demographic-designs-in-kashmir/>.

IAJK's relationship to India. The popular position in IAJK was "land to the tiller"—anti-feudal, anti-corporatist, pro-labor, pro-farmer policies designed to end centuries of exploitation and abuse of disempowered, marginalized groups in the Princely State (who were disproportionately Muslim)—which was directly contrary to the interests of the landed elites, who were disproportionately high-caste Hindus close to the Hindu supremacist, British colonial Dogra dynasty. The *Hindutva* obsession with IAJK found its most politically salient talking points in India (post-Partition) by attacking land reform in IAJK as a violation of Hindu rights. Despite otherwise violating international law, in *Prem Nath Kaul* (1959) the Supreme Court was willing to oppose the *Hindutva* position on land in IAJK. That willingness did not last.

In the current scenario, aided by the myriad (illegal) changes of law in and regarding IAJK (including the "abrogation" of Article 370), Indian authorities have unwound decades-old land reforms in IAJK (which constituted one of the few, tangible victories of the longstanding anti-colonial, pro-democracy movement in the Princely State and IAJK) and re-established a system of land control comparable to the feudal system of the British colonial Dogra dynasty—with the beneficiaries of land dispossession and redistribution now being Indian military interests and corporate interests aligned with the Indian state. Indian authorities have implemented myriad policies and processes promoting the expropriation of the property of the people of IAJK and their dispossession which especially target the Muslims of IAJK.²⁴² These *Hindutva* reforms include the expropriation of homes, agricultural land, grazing land, orchards, shopping complexes and commercial building on the pretexts of alleged "terrorism",²⁴³ the

alleged sheltering of "terrorists"²⁴⁴ or the alleged funding of "terrorism"²⁴⁵ (where "terrorism" means the defense of human rights), for purported military purposes,²⁴⁶ for purported economic or environmental policy reasons²⁴⁷ and to remedy the "illegal" procurement of land, either on an "anti-encroachment" or "land jihad" pretext. Indian authorities have allocated and are allocating expropriated land in IAJK to non-local parties aligned with the Indian government.²⁴⁸

All of these policies and procedures, including the underlying changes in local law that legitimate them, are illegal. Occupying powers are obligated, subject to narrow exceptions, to respect the laws in force in occupied territory.²⁴⁹ These policies and procedures violate various economic and social rights (including under Universal Declaration of Human Rights (Article 25, paragraph 1), the International Covenant on Civil and Political

242 Zargar, Safwat, "Explainer: What Exactly Are the Changes to Land Laws in Jammu and Kashmir?," Scroll.in, October 29, 2020, <https://scroll.in/article/977057/explainer-what-exactly-are-the-changes-to-land-laws-in-jammu-and-kashmir>; Wani, Maknoon, "BJP Land Reforms and the Shifting Political Landscape in Kashmir," Progressive International, June 14, 2023, <https://progressiveinternational.wire/2023-06-14-bjp-land-reforms-and-the-shifting-political-landscape-in-kashmir/en>.

243 See, for example, "NIA Attaches 2 More Properties in Hurriyat Terror Funding Case

in Kashmir," DTNEXT, June 13, 2023, <https://www.dtnext.in/news/national/nia-attaches-2-more-properties-in-hurriyat-terror-funding-case-in-kashmir-718300>; "SIU Attaches Militant's 26 Kanal Land In North Kashmir," Kashmir Observer, June 15, 2023, <https://kashmirobserver.net/2023/06/15/siu-attaches-property-of-pak-based-militant-in-north-kashmir-lolab/>; "House of Terrorist Involved in Killing of Kashmiri Pandit in Shopian to Be Attached, Kin Arrested," Greater Kashmir, August 17, 2022, <https://www.greaterkashmir.com/kashmir/house-of-militant-involved-in-killing-of-kashmiri-pandit-in-shopian-to-be-attached-kin-arrested>.

244 See, for example, "Police Attach Residential House In North Kashmir," KashmirLife, September 25, 2022, <https://kashmirilife.net/police-attach-residential-house-in-north-kashmir-300989/>; "SIU Attaches House of LeT Associate in South Kashmir," The Kashmir Walla, June 22, 2023, <https://thekashmirwalla.com/siu-attaches-house-of-let-associate-in-south-kashmir/>; "Attached House Used for Terrorism in Anantnag: SIU," Greater Kashmir, June 1, 2023, <https://www.greaterkashmir.com/kashmir/attached-house-used-for-terrorism-in-anantnag-siu>.

245 See, for example, "Terror Funding Case: ED Attaches House of Shabir Shah in Srinagar," Greater Kashmir, November 4, 2022, <https://www.greaterkashmir.com/kashmir/ed-attaches-house-of-shabir-shah-under-money-laundering-act/>; "Terror Funding Case: SIA, Police Attach 124 Properties across J&K," Greater Kashmir, June 7, 2023, <https://www.greaterkashmir.com/kashmir/sia-police-attach-124-properties-across-jk/>; "Property Worth Millions Of 'Anti-Nationals' Attached In Kashmir," Kashmir Observer, June 7, 2023, <https://kashmirobserver.net/2023/06/07/property-worth-millions-of-anti-nationals-attached-in-kashmir/>.

246 See, for example, "JK Admin Approves Land Transfers for Various Purposes," Free Press Kashmir, December 21, 2022, <https://freepresskashmir.news/2022/12/21/jk-admin-approves-land-transfers-for-different-public-purposes/>.

247 Aggarwal, Mayank, "Are Forest Rules Used against Tribal People in Jammu and Kashmir?," Mongabay-India, December 1, 2020, <https://india.mongabay.com/2020/12/are-forest-rules-used-against-tribal-people-in-jammu-and-kashmir/>; Muzaffar Bhat, Raja, "Issuing Eviction Notices to Forest Dwellers Violates Apex Court Ruling," Kashmir Observer, July 24, 2023, <https://kashmirobserver.net/2023/07/24/issuing-eviction-notices-to-forest-dwellers-violates-apex-court-ruling/>.

248 Bhakto, Anando, "Jammu and Kashmir's Land Endowment Scheme Stokes Fears of Demographic Change," Frontline, July 27, 2023, <https://frontline.thehindu.com/the-nation/jammu-and-kashmir-land-endowment-scheme-controversy-demographic-change-fears/article67106410.ece>.

249 International Committee of the Red Cross, "Occupation and International Humanitarian Law: Questions and Answers," ICRC, April 8, 2004, <https://www.icrc.org/en/doc/resources/documents/misc/634kfc.htm>.

Rights (Articles 17, 23, and 27), the International Covenant on Economic, Social and Cultural Rights (Article 11, Paragraph 1), and the Convention on the Rights of the Child (Article 27, Paragraph 3) and are also policies in support of forced demographic change, which is also illegal under international humanitarian law and a crime against humanity.²⁵⁰ These policies and procedures are also implemented in an illegal manner that violates human rights standards and due process.²⁵¹

The Supreme Court's own precedent stands for the proposition that dispossession or eviction without due process or with the use of unreasonable force is illegal and a violation of fundamental rights.²⁵² Nonetheless, consistent with the Supreme Court's condoning of violence targeting Kashmiri Muslims described in Section IX of this report and discriminatory treatment of Kashmiri Muslims even as compared to other demonized and marginalized groups subject to Indian authority described in Sections VI, VII and VIII of this report, when Kashmiri Muslims have been bold enough to attempt to seek Supreme Court intervention to protect their rights under the laws imposed on them, the Supreme Court has declined to intervene or even address irreparable harm in the case of, for example, the illegal, pretextual bulldozing of homes.²⁵³

250 Kashmir Scholars Consultative and Action Network, Open letter to the UN Secretary General, the UN Office on Genocide Prevention and the Responsibility to Protect and the UN Security Council: Requesting an immediate intervention to prevent forced demographic change in Jammu and Kashmir, KSCAN, May 23, 2020, <https://kashmirscholars.files.wordpress.com/2020/05/open-letter-on-the-new-domicile-regulations-in-jk-1.pdf>.

251 "India: Demolitions in Kashmir must be immediately halted and those affected compensated," Amnesty International, February 7, 2023, <https://www.amnesty.org/en/latest/news/2023/02/india-demolitions-in-kashmir-must-be-immediately-halted-and-those-affected-compensated/>.

252 See, for example, *Olga Tellis vs Bombay Municipal Corporation* [1985] (eviction of pavement dwellers using unreasonable force, without giving them a chance to explain, is unconstitutional as a violation of their right to livelihood) and *M/S. Shantistar Builders vs Narayan Khimalal Totame And Ors*, AIR 1990 SC 630 (the right to life is not a right to mere animal existence; the constitutional right to life includes the right to housing or a reasonable residence).

253 "SC Refuses To Stay J&K Govt's Anti-Encroachment Drive," Kashmir Observer, January 20, 2023, <https://kashmirobserver.net/2023/01/20/sc-refuses-to-stay-ruling-on-removing-encroachments-in-jk/>; Mariam Biju, Rintu, "Supreme Court Refuses To Entertain Plea Challenging Direction To Remove Encroachments On Roshni Land In Jammu & Kashmir," Live Law, January 31, 2023, <https://www.livelaw.in/top-stories/supreme-court-plea-against-govt-order-removal-encroachments-roshni-land-jammu-kashmir-withdrawn-220345>.

As litigants and observers (within India and international) continue to look to the Supreme Court as a bulwark against injustices or as a source of hope for some limitation (if not accountability) for grave, ongoing violations targeting the weak and marginalized under Indian authority or even at a more rudimentary level as a legitimate, functional legal institution, the Supreme Court's multigenerational, illegal course of conduct and ongoing lawfare targeting IAJK and its people demands a fulsome, clear-eyed reckoning. This report attempts to contribute toward that process in the interest of actual justice, especially for the disempowered, marginalized people of IAJK. This analysis demonstrates the following:

The Supreme Court has not upheld and is not upholding the rule of law.

Consider in particular the Supreme Court's exercise of jurisdiction over IAJK (see Section III), the bad faith and self-dealing evident in relationship of India and its Supreme Court to IAJK as exemplified by the career of Mehr Chand Mahajan (see Section IV), the history of the Supreme Court's jurisprudence regarding the state of the State of J&K and India's relationship to it (see Section V), the Supreme Court's jurisprudence on arbitrary detention in IAJK (see Section VI) and the Supreme Court's direct involvement in the murders of Maqbool Bhat—a prisoner of war—and Afzal Guru – an innocent man framed and demonized by powerful state and non-state institutions in India (see Section IX). Rather than uphold the rule of law, the Supreme Court has acted discriminatorily, promoted legal artifice and self-dealing in support of grave international crimes and legalized the criminalization of fundamental rights.

The Supreme Court has not been and is not a check on abuses by Indian executive or legislative institutions.

Consider in particular the legislation discussed in this report – including the Public Safety Act (see Section VI), AFSPA (see Section VII),

TADA (see Section VI), POTA (see Section IX), the “abrogation” of Article 370 and related or subsidiary legal maneuvers imposed by the Indian government on IAJK (see Section V and this Section X)—and the abuses, violations and crimes that have occurred under such laws, including several direct examples discussed in this report. Rather than check such abuses, the Supreme Court has legalized them and promoted impunity.

The Supreme Court is itself a violator and an abettor of violations, and therefore incapable of offering remedy or recourse.

Consider in particular the Supreme Court’s jurisprudence regarding the state of the State of J&K and India’s relationship to it (see Section V), the *Masooda Parveen* case (see Section VII) and the murders of Maqbool Bhat and Afzal Guru (see Section IX). The nature of the violations and crimes committed and abetted by the Supreme Court also matter. These are not minor or occasional lapses or failures. They are extremely grave, systematic and fundamental – the denial of the right to self-determination, annexation, colonization, forced demographic change, atrocity crimes, murder, torture, condoning violence targeting a marginalized group, denial of the right to life, denial of the right to liberty, denial of the right to free expression, denial of the right to a free press and information, denial of the right to work, denial of the right to free movement and the denial of the right to housing.

The Supreme Court continues to facilitate escalated, extravagant violations.

Consider in particular the ongoing failure to address the cases of Kunan Poshpora (Section VIII), Chattisinghpora (Section IX) and Wandhama (Section IX), the approach to collective punishment and the mass, widespread fundamental rights in *Anuradha Bhasin* (Section VIII) and the still-escalating, grave violations inherent and consequential to the “abrogation” of Article 370 and related or subsidiary legal maneuvers imposed by the

Indian government on IAJK since August 4, 2019 (this Section X). The history of grave, widespread violations by Indian authorities and forces in the Princely State and IAJK began within 75 days of India’s creation in 1947. Those violations have continued for over 75 years. Since the “abrogation” of Article 370, Indian authorities are responsible for an escalation of certain grave violations in an environment of extreme isolation, total silencing and a high risk of genocide and mass atrocities.²⁵⁴ Those escalated violations include: the incentivization and promotion of forced demographic change,²⁵⁵ the expropriation of homes and other property,²⁵⁶ heightened political disempowerment,²⁵⁷ heightened economic disempowerment,²⁵⁸ cultural erasure,²⁵⁹ mass illegal

254 Stanton, Gregory H., “Genocide Alert for Kashmir, India,” Genocide Watch, August 15, 2019, <https://www.genocidewatch.com/single-post/2019/08/15/Genocide-Alert-for-Kashmir-India>; Sarfraz, Hammad, “Kashmir Is On The Brink Of Genocide, Warns American Scholar,” Genocide Watch, February 5, 2021, <https://www.genocidewatch.com/single-post/kashmir-is-on-the-brink-of-genocide-warns-american-scholar>; “Written Submission of John Sifton to the United States Congress Tom Lantos Human Rights Commission,” Human Rights Watch, November 14, 2019, <https://www.hrw.org/news/2019/11/14/jammu-and-kashmir-context>; Husain, Waris, “Rising Mass Atrocity Risks in India,” interview with the United States Holocaust Memorial Museum, March 30, 2022, <https://www.ushmm.org/genocide-prevention/blog/rising-mass-atrocity-risks-in-india>.

255 Kashmir Scholars Consultative and Action Network, Open letter to the UN Secretary General, the UN Office on Genocide Prevention and the Responsibility to Protect and the UN Security Council: Requesting an immediate intervention to prevent forced demographic change in Jammu and Kashmir, KSCAN, May 23, 2020, <https://kashmirscholars.files.wordpress.com/2020/05/open-letter-on-the-new-domicile-regulations-in-jk-1.pdf>.

256 See, Wani, Maknoon, “BJP Land Reforms and the Shifting Political Landscape in Kashmir,” Progressive International, June 14, 2023, <https://progressiveinternational.wire/2023-06-14-bjp-land-reforms-and-the-shifting-political-landscape-in-kashmir/en>; “Terror Funding Case: SIA, Police Attach 124 Properties across J&K,” Greater Kashmir, June 7, 2023, <https://www.greaterkashmir.com/kashmir/sia-police-attach-124-properties-across-jk>; “Property Worth Millions Of Anti-Nationals’ Attached In Kashmir,” Kashmir Observer, June 7, 2023, <https://kashmirobservers.net/2023/06/07/property-worth-millions-of-anti-nationals-attached-in-kashmir/>; Bhat, Tariq, “How Kashmir’s New Land-Grant Rules Have Put Livelihoods In Jeopardy,” The Week, April 16, 2023, <https://www.theweek.in/theweek/statescan/2023/04/16/effects-of-new-land-grant-rules-in-jammu-and-kashmir.html>; “The Great Land-Grab: Disempowering People in Indian Occupied Jammu & Kashmir,” Legal Forum for Kashmir, February 6, 2023, <https://lfkashmir.com/wp-content/uploads/2023/02/LFK-Factsheet-The-Great-Land-Grab.pdf>.

257 Jaleel, Muzamil, “Clean Slate: New ‘Elected’ District Councils Will End Politics in Kashmir,” Inverse Journal, October 25, 2020, <https://www.inversejournal.com/2020/10/25/clean-slate-new-elected-district-councils-will-end-politics-in-kashmir-by-muzamil-jaleel/>; “Jammu and Kashmir to Get Delimitation Commission,” The Hindu, February 18, 2020, <https://www.thehindu.com/news/national/other-states/jammu-and-kashmir-to-get-delimitation-commission/article30846668.ece>; Majid, Zulfikar, “Over Seven Lakh Added in Jammu and Kashmir Final Voter List,” Deccan Herald, November 25, 2022, <https://www.deccanherald.com/national/north-and-central/over-seven-lakh-added-in-jammu-and-kashmir-final-voter-list-1165552.html>.

258 Nandini Ghosh, Shrimoyee, “One Nation, One Flag, One Constitution?,” Raiot, September 16, 2019, <http://www.raiot.in/dismantling-370-in-kashmir-part-1/>; Ayoub, Ejaz, “J&K’s Unfolding Economic Black Hole,” Kashmir Observer, October 1, 2021, <https://kashmirobservers.net/2021/10/01/ks-unfolding-economic-black-hole/>.

259 Trivedi, Divya “Cultural Invasion: Modi’s Move to Rename Historical Places and Institutions in Kashmir,” Frontline, October 6, 2021, <https://frontline.thehindu.com/the-nation/cultural-invasion-modi-move-to-rename-historical-places-and-institutions-in>

imprisonment,²⁶⁰ denial of the right to free expression,²⁶¹ denial of the right to a free press and information²⁶² and the repression of human rights defenders.²⁶³ The Supreme Court has been instrumental in aiding in abetting these escalated violations while preventing any scrutiny or accountability, and providing legal cover, for them.

The international community is complicit in the Supreme Court's illegality in IAJK.

The Supreme Court's course of conduct regarding IAJK and the rights of its people demonstrates the criminality, violence, perfidy and bad faith of Indian institutions (at the highest level). India's bad faith was clear to representatives of the international community from very early on, likely by July 1948.²⁶⁴ As discussed in Section IV, rather than

kashmir/article36837968.ece; "No Function Held to Mark Martyrs' Day in Kashmir," Kashmir Reader, July 14, 2022, <https://kashmirreader.com/2022/07/14/no-function-held-to-mark-martyrs-day-in-kashmir/>; Ganai, Naseer, "How J&K Government's Renaming Exercise Is Rewriting History," Outlook India, June 25, 2022, <https://www.outlookindia.com/national/how-jk-government-renaming-exercise-is-rewriting-history-news-204642>.

260

261 Lateef Misgar, Umar, "On Censorship in Kashmir," Los Angeles Review of Books, June 27, 2021, <https://lareviewofbooks.org/article/on-censorship-in-kashmir/>; Sharma, Yashraj, and Gafira Qadir, "In Kashmir, a Systematic Crackdown on Freedom of Speech," The Kashmir Walla, May 24, 2021, <https://thekashmirwalla.com/2021/05/in-kashmir-a-systematic-crackdown-on-freedom-of-speech/>; "India: 'We are Being Punished By The Law' – Three Years of Abrogation of Article 370 in Jammu & Kashmir," Amnesty International, September 2, 2022, <https://www.amnesty.org/en/documents/asa20/5959/2022/en/>.

262 Kathju, Junaid, "Crackdown on Journalists the New Normal in Kashmir," The Wire, September 22, 2021, <https://thewire.in/media/summoned-raided-censored-crackdown-on-journalists-is-the-new-normal-in-kashmir>; Tantray, Shahid, "How Journalism in Kashmir Has Been Driven to the Edge," The Caravan, February 1, 2022, <https://caravanmagazine.in/media/crackdown-on-kashmir-journalists-censorship-press-freedom-article370>; Dhawan, Sonali, "Kashmir Media at a 'Breaking Point' amid Rising Number of Journalist Detentions," Committee to Protect Journalists, May 12, 2022, <https://cpj.org/2022/05/kashmir-media-at-a-breaking-point-amid-rising-number-of-journalist-detentions/>.

263 Javeed, Auqib, "Why A Nobel Nominee Is A Target In Kashmir Crackdown," Article 14, October 30, 2020, <https://www.article-14.com/post/why-a-nobel-nominee-is-a-target-in-kashmir-crackdown>; "100 Days of Arbitrary Detention of Khurram Parvez: AFAD Demands Immediate Release," Disappeared Asia, March 2, 2022, <https://www.afad-online.org/news/10-statements/539-100-days-of-arbitrary-detention-for-khurram-parvez-afad-demands-immediate-release>; "India: Counter-terror raids on civil society groups signal escalating crackdown on dissent," Amnesty International, October 29, 2020, <https://www.amnesty.org/en/latest/press-release/2020/10/india-counter-terror-raids-on-civil-society-groups-signal-escalating-crackdown-on-dissent/>.

264 "The Indian Government have progressively receded from their original position - which was that the question of accession was to be ultimately determined by a fair and unfettered plebiscite. Their position now was that the bringing about of the necessary conditions for conducting such a plebiscite was a constitutional question to be decided by the Maharajah and his Government." Notes on the Informal Meeting of the Representatives of Colombia and the United States with the Minister for Foreign Affairs of Pakistan [17 July 1948], United Nations Commission for India and Pakistan: annexes to the interim report, Annex 8, <https://digitallibrary.un.org/record/1298395?ln=en>. If not earlier, this was abundantly clear by September 1950 when Owen Dixon (as UN Representative for India and Pakistan) reported the following to the UN Security Council: "In the end, I became convinced that India's agreement would never be

call India to account, the international community has been complicit in India's violations through silence, and has in fact aided and abetted India's violations. In recent years, given ongoing normalization of India and continued promotion of India as a leading democracy, global leader on human rights and global leader on counter-terrorism, the international community has actually proactively escalated in more overt ways its longstanding aiding and abetting of India's (and its Supreme Court's) illegal course of conduct in respect of a territory under direct UN Security Council auspices (at India's request, no less). Consider the implications of Table 3 in the pages that follow.

This criminality here is not just institutional. It is personal. Eminent Indians (and eminent Kashmiris, like Sheikh Abdullah) have, over decades now, acted criminally regarding IAJK and its people. Those eminent personages include lawyers and judges. An emblematic case discussed in Section IV of this report is that of Mehr Chand Mahajan. Mahajan acted duplicitously, unethically and criminally. He used his power, authority and influence to promote and legitimate disinformation, grave illegalities and the misrule of law.

There were powerful people responsible for the historic illegalities discussed in this report. There are powerful people responsible for the ongoing grave violations and illegalities that are occurring today. As described in Section II, an incredibly damning aspect of this reality is that it continues essentially without criticism or controversy. At a minimum, the international community has egregiously failed in IAJK– by allowing grave violations and illegalities in IAJK to occur, continue and escalate over time without accountability and by facilitating their occurring without meaningful criticism or controversy. Although

obtained to demilitarization in any such form or to provisions governing the period of the plebiscite of any such character, as would in my opinion permit of the plebiscite being conducted in conditions sufficiently guarding against intimidation and other forms of influence and abuse by which the freedom and fairness of the plebiscite might be imperilled." Letter dated 15 September 1950 from the United Nations Representative for India and Pakistan to the President of the Security Council transmitting his report, <https://digitallibrary.un.org/record/632731?ln=en>.

obvious and manifestly illegal and immoral, the criminality evident throughout the analysis in this report is hardly recognized internationally. The international community remains criminally silent and, at this writing, more universally beholden than ever to the violator. In IAJK, to merely speak of these realities subjects one to criminal prosecution as a terrorist.

International Complicity in India's Consolidation of Colonization in IAJK

Official Indian Step	India Brings Kashmir Dispute to UN Security Council January 1, 1948 India seeks peaceful dispute resolution through the UN Security Council claiming that tribesmen aided by Pakistan and Pakistani nationals invaded the Princely State—which it claims is now (through accession) actually India; India claims that it is committed to the people of the Princely State deciding their own future by a democratic, impartial plebiscite under international auspices and rejects any suggestion that India was acting for its own advantage.		
	Official International Response	UN Security Council Resolution 38 January 17, 1948 UN Security Council calls on India and Pakistan to immediately take all measures to improve and not aggravate the situation in the Princely State.	UN Security Council Resolution 39 January 20, 1948 UN Security Council establishes UN Commission for India and Pakistan (UNCIP) to investigate and mediate India-Pakistan dispute over Princely State.
		UN Security Council Resolution 47 April 21, 1948 UN Security Council notes that both India and Pakistan desire the question of the Princely State’s accession to be decided through a democratic, free, impartial plebiscite; recommends both countries create proper conditions for that plebiscite by demilitarizing and safeguarding the people’s human rights.	UNCIP Resolution August 13, 1948 UNCIP sets out principles for a truce between India and Pakistan; India and Pakistan reaffirm their wish to determine the future of the Princely State in accordance with the will of the people and agree to consult with UNCIP to determine fair and equitable conditions for the people’s exercise of their rights.
	UN Security Council Resolution 51 June 3, 1948 UN Security Council reaffirms UN Security Council Resolutions 38, 39 and 47 and directs UNCIP to proceed to the Princely State to achieve UN Security Council goals.	UNCIP Resolution January 5, 1949 UNCIP notes India and Pakistan accept that the question of Princely State’s accession will be decided through a democratic, free, impartial plebiscite under UN auspices; directs local authorities to ensure that the people’s rights are respected and freely exercised and all political prisoners are released.	
	Significance	India both claims the Princely State is part of India (an act of colonization) and claims to be committed to the right to self-determination of the people of the Princely State. The UN Security Council defends the people of the Princely State’s right to self-determination (and other human rights) and repeatedly notes that India and Pakistan both agree to the people’s exercise of their right to self-determination (through a democratic, free, impartial plebiscite).	

<i>Official Indian Step</i>	Article 370 January 26, 1949 India implements a constitution with a provision (although nominally temporary and subject to the people of the Princely State's exercise of their right to self-determination) that reflects the Instrument of Accession and also creates Indian constitutional mechanisms to extend Indian power and control over IAJK.		
<i>Official International Response</i>	<table> <tr> <td data-bbox="373 571 876 831"> UN Security Council Resolution 80 March 14, 1950 UN Security Councils calls on India and Pakistan to demilitarize the Princely State within 5 months; appoints a UN representative to assist with demilitarization, mediate between India and Pakistan and plan for the administration of a plebiscite. </td><td data-bbox="909 571 1430 1024"> UN Security Council Resolution 91 March 30, 1951 UN Security Council observes that the Indian-client government in IAJK is seeking to convene a J&K Constituent Assembly; affirms that convening a J&K Constituent Assembly and any action that such Assembly might attempt to take to determine the future shape and affiliation of the entire State or any part thereof violates established principles, existing UN Security Council resolutions and the will of the people; calls on India and Pakistan to cooperate with the UN Representative to effect demilitarization and to accept arbitration on all unresolved points. </td></tr> </table>	UN Security Council Resolution 80 March 14, 1950 UN Security Councils calls on India and Pakistan to demilitarize the Princely State within 5 months; appoints a UN representative to assist with demilitarization, mediate between India and Pakistan and plan for the administration of a plebiscite.	UN Security Council Resolution 91 March 30, 1951 UN Security Council observes that the Indian-client government in IAJK is seeking to convene a J&K Constituent Assembly; affirms that convening a J&K Constituent Assembly and any action that such Assembly might attempt to take to determine the future shape and affiliation of the entire State or any part thereof violates established principles, existing UN Security Council resolutions and the will of the people; calls on India and Pakistan to cooperate with the UN Representative to effect demilitarization and to accept arbitration on all unresolved points.
UN Security Council Resolution 80 March 14, 1950 UN Security Councils calls on India and Pakistan to demilitarize the Princely State within 5 months; appoints a UN representative to assist with demilitarization, mediate between India and Pakistan and plan for the administration of a plebiscite.	UN Security Council Resolution 91 March 30, 1951 UN Security Council observes that the Indian-client government in IAJK is seeking to convene a J&K Constituent Assembly; affirms that convening a J&K Constituent Assembly and any action that such Assembly might attempt to take to determine the future shape and affiliation of the entire State or any part thereof violates established principles, existing UN Security Council resolutions and the will of the people; calls on India and Pakistan to cooperate with the UN Representative to effect demilitarization and to accept arbitration on all unresolved points.		
<i>Significance</i>	India takes affirmative steps to colonize IAJK and establishes the domestic legal framework to consolidate its colonization while also still claiming to respect the people of the Princely State's right to self-determination. The UN Security Council rejects the affirmative, discrete steps of colonization taken by India and defends the people of the Princely State's right to self-determination (and other human rights) and seeks the immediate demilitarization of the region in order to implement a plebiscite.		

International Complicity in India's Consolidation of Colonization in IAJK

<i>Official Indian Step</i>	<i>J&K Constituent Assembly Convened</i> <i>October 31, 1951</i> Under Indian auspices, Indian client politicians in IAJK convene a J&K Constituent Assembly to validate IAJK's accession to India and Indian constitutional authority over IAJK.	
<i>Official International Response</i>	<i>UN Security Council Resolution 96</i> <i>November 10, 1951</i> UN Security Council notes that both India and Pakistan reaffirm that the question of the Princely State's accession should be determined through a free, impartial plebiscite under UN auspices; instructs the UN Representative to effectuate demilitarization; calls on India and Pakistan to fully cooperate with the UN Representative to resolve outstanding differences.	<i>UN Security Council Resolution 98</i> <i>December 23, 1952</i> UN Security Council urges India and Pakistan to immediately negotiate demilitarization under the UN Representative's auspices and report back in 30 days.
<i>Significance</i>	India definitively colonizes IAJK (by convening the J&K Constituent Assembly) in direct contravention of a UN Security Council resolution (Resolution 91). The UN Security Council defends the people of the Princely State's right to self-determination and seeks the immediate demilitarization of the region in order to implement a plebiscite.	
<i>Official Indian Step</i>	<i>Basic Order</i> <i>May 14, 1954</i> India extends Indian citizenship to state subjects of the Princely State and the Indian constitution and jurisdiction of the Supreme Court to the State of J&K.	
<i>Official International Response</i>	<i>NONE</i>	
<i>Significance</i>	Indian consolidates its colonization of IAJK. The UN Security Council officially does nothing.	

*Official
Indian Step*

*Krishna Menon Speech at UN Security Council
January 23–24, 1957*

India's official representative at the UN Security Council declares that the Council is incompetent to go into the legality of the Princely State's accession and states that the Princely State's accession to India is complete (the J&K Constituent Assembly then officially dissolved on January 26, 1957).

*Official
International
Response*

*UN Security Council Resolution 122
January 24, 1957*

UN Security Council reaffirms Resolution 91 of 1951.

*UN Security Council Resolution 123
February 21, 1957*

UN Security Council requests its President to examine any proposal likely to contribute to a settlement in accordance with previous Security Council and UNCIP resolutions (which call for a plebiscite, safeguarding people's rights and demilitarization) and report back within 2 months.

*UN Security Council Resolution 126
December 2, 1957*

UN Security Council notes that both India and Pakistan accept that the future status of the Princely State will be determined through a democratic, free, impartial plebiscite and expresses concern over a lack of progress; requests the UN Representative to make recommendations to achieve progress toward the achievement of prior resolutions as soon as possible.

Significance

India officially, publicly declares on the international stage that it had annexed and colonized IAJK. The UN Security Council reaffirms its rejection of the affirmative, discrete steps of colonization taken by India and its defense of the people of the Princely State's right to self-determination, requesting new efforts to achieve the demilitarization of the region in order to implement a plebiscite.

International Complicity in India's Consolidation of Colonization in IAJK

<i>Official Indian Step</i>	<i>Prem Nath Kaul Judgment</i> <i>March 2, 1959</i> India's Supreme Court rules that the Instrument of Accession is valid and final, that Article 370 is legal and valid, that the intent of the framers of the Indian constitution is dispositive for legally interpreting the foregoing and that the J&K Constituent Assembly is the final authority on the application of Indian law in the State of J&K.
<i>Official International Response</i>	<i>NONE</i>
<i>Significance</i>	India's Supreme Court validates India's annexation and colonization of IAJK in direct contravention of India's prior international commitments, international law and UN Security Council resolutions (which held that a democratic, free, impartial plebiscite under UN auspices would determine the future status of the Princely State and that steps taken by the J&K Constituent to determine the future status of IAJK were invalid). The UN Security Council officially does nothing.
<i>Official Indian Step</i>	<i>Sampat Prakash Judgment</i> <i>October 10, 1968</i> India's Supreme Court rules that the Indian government is the ultimate legal authority in the State of J&K, subject to some consultation or concurrence with an Indian-client administration in the State of J&K.
<i>Official International Response</i>	<i>NONE</i>
<i>Significance</i>	India's Supreme Court validates the consolidation of India's colonization of IAJK and the process by which further consolidation of colonization can occur under the color of law. The UN Security Council officially does nothing.
<i>Official Indian Step</i>	<i>Maqbool Damnoo Judgment</i> <i>January 5, 1972</i> India's Supreme Court rules that the Indian government is the ultimate legal authority in the State of J&K (and can consult or concur with itself in exercising its authority).
<i>Official International Response</i>	<i>NONE</i>
<i>Significance</i>	India's Supreme Court validates the consolidation of India's colonization of IAJK and the process by which further consolidation of colonization can occur under the color of law. The UN Security Council officially does nothing.

<i>Official Indian Step</i>	<i>Santosh Gupta Judgment</i> <i>December 16, 2016</i> India's Supreme Court rules that the State of J&K is and shall be colonized (or integral to) and subject to the colonial domination of (or subordinate to) India.
<i>Official International Response</i>	<i>NONE</i>
<i>Significance</i>	India's Supreme Court rules that the colonization of IAJK is complete, destined and irrevocable. The UN Security Council officially does nothing.

<i>Official Indian Step</i>	<i>C.O. 272, C.O. 273, The Jammu and Kashmir Reorganisation Act</i> <i>August 5, 2019</i> India's government fulfills the Hindutva vision for the State of J&K (consistent with Santosh Gupta), "fully integrating" the State of J&K with India by disintegrating, the territory and achieving the total disempowerment, subjugation and domination of its people.
<i>Official International Response</i>	<i>NONE</i>
<i>Significance</i>	The Indian government disintegrates IAJK, making any exercise by the people of the Princely State of their right to self-determination a practical impossibility, while also achieving unprecedented levels of colonial domination over the people of IAJK. The UN Security Council officially does nothing.

Terms

In this Report, the following capitalized terms have the following meanings:

AFSPA	The Armed Forces (Jammu and Kashmir) Special Powers Act, 1990, a law that India imposed on IAJK in 1990 which authorizes Indian forces to use of any and all force (including deadly force) while granting immunity from prosecution; this has legalized, and legalized impunity for, grave human rights violations and atrocity crimes in IAJK.
Article 370	Article 370 of India's constitution which came into effect on January 26, 1948 and was the Indian legal basis for consolidating its colonization of IAJK while denying its people fundamental rights; this was "abrogated" on August 5, 2019.
Article 35A	Article 35A of India's constitution which came into effect in 1954 (pursuant to the Basic Order) and provided an Indian constitutional basis for certain rights and privileges for state subjects of the Princely State (legally recognized in 1927); this was "abrogated" on August 5, 2019.
Basic Order	The Constitution (Application to Jammu and Kashmir) Order of May 14, 1954, an Indian government order pursuant to Article 370 that established the Indian constitutional relationship to the State of J&K and was the Indian basis of the illegal application of Indian laws to IAJK until superseded by C.O. 272 on August 5, 2019; among other things, this order extended Indian citizenship to the people of IAJK (an act of annexation and colonization) and extended the Indian Supreme Court's jurisdiction to the State of J&K.
BJP	The Bharatiya Janata Party, a far-right Indian political party that brings together Hindutva (Hindu supremacist) and neoliberal economic ideologies and has dominated national politics in India in recent years (as the ruling party, forming India's national government continuously with larger and larger mandates since 2014).
BSF	Border Security Force, an armed police force under the jurisdiction of India's Home Ministry formed in 1965 mandated to ensure border security; one of the Indian forces responsible for widespread grave violations and atrocity crimes in IAJK.
CBI	Central Bureau of Investigation, the Indian domestic investigation agency under the jurisdiction of the Ministry of Personnel and Training.
Congress	Indian National Congress, a political party that is credited as the leading party of anti-British colonial Indian nationalism and as the leading "secular nationalist" national political party in India.
IAJK	Indian-administered Jammu and Kashmir, or those portions of the territory of the Princely State occupied, annexed and colonized by the Republic of India.
Indian Constitution Proclamation	The proclamation issued by Hari Singh's son Karan Singh on November 25, 1949 (acting under the Yuvraj Proclamation) accepting the newly drafted Indian constitution.
Instrument of Accession	An instrument acceding the Princely State to India on a limited (only with respect to certain scheduled matters) and conditional (subject to the exercise by the people of the Princely State of their right to self-determination), purportedly signed by Hari Singh on October 26 or 27, 1947 (although this is disputed by historians).

J&K Constituent Assembly	The constitutional assembly of the State of J&K which was convened under Indian auspices in October 1951 and formally dissolved on January 26, 1957 which was an anti-democratic, authoritarian body constituted by Indian-client politicians and directly and indirectly manipulated by the Indian government to achieve its own ends.
J&K Constitution	The constitution for the State of J&K framed by the J&K Constituent Assembly and made effective on January 26, 1957.
J&K Government	The government of the State of J&K.
JKNLF	Jammu Kashmir National Liberation Front, a political party founded by Maqbool Bhat (among others) in 1965 to achieve the national liberation and the self-determination of the people of the Princely State.
Maharaja	The title of the British colonial Dogra dynasty's head-of-state in the Princely State.
Muslim Conference	The All Jammu and Kashmir Muslim Conference, an anti-colonial, pro-democracy political party and the primary organized political opposition to the Dogra dynasty in the Princely State prior to Partition.
National Conference	The All Jammu and Kashmir National Conference, the political party created in 1939 through a Sheikh Abdullah-led, Congress-aligned insurgency within the Muslim Conference.
Partition	The creation of the Republic of India and the Islamic Republic of Pakistan in August 1947.
PAJK	Pakistan-administered Jammu and Kashmir, or those portions of the territory of the Princely State occupied by the Islamic Republic of Pakistan.
POTA	Prevention of Terrorism Act, India's primary counter-terror law from 1995 to 2004 (when it was allowed to lapse, purportedly because of the broad illegalities and abuses it facilitated).
Princely State	Princely State of Jammu and Kashmir, a British colonial political entity created by the Treaty of Amritsar (1846) between the United Kingdom and Gulab Singh, a Hindu supremacist warlord, making Kashmir a British colony and creating a relationship of suzerainty between the United Kingdom and the Dogra dynasty.
Public Safety Act	The Jammu and Kashmir Public Safety Act, 1978 (and its predecessor the Jammu and Kashmir Preventive Detention Act, 1964), a preventive detention law specific to the State of J&K widely used to illegally imprison people in the State of J&K over decades.
Supreme Court	The Supreme Court of India.
State of J&K	The Indian state of Jammu and Kashmir.
TADA	Terrorism and Disruptive Activities (Prevention) Act, India's primary counter-terror law from 1985 to 1995 (when it was allowed to lapse, purportedly because of the broad illegalities and abuses it facilitated).
Yuvraj Proclamation	The proclamation issued by Hari Singh on June 9, 1949 temporarily delegating his power and authority to his son Karan Singh (due to his absence from the State of J&K for health reasons).

Instrument of Accession

Offer Letter – Hari Singh to Mountbatten (Dated 26 October 1947)

My dear Lord Mountbatten,

I have to inform your Excellency that a grave emergency has arisen in my State and request immediate assistance of your Government.

As your Excellency is aware the State of Jammu and Kashmir has not acceded to the Dominion of India or to Pakistan. Geographically my State is contiguous to both the Dominions. It has vital economical and cultural links with both of them. Besides my State has a common boundary with the Soviet Republic and China. In their external relations the Dominions of India and Pakistan cannot ignore this fact.

I wanted to take time to decide to which Dominion I should accede, or whether it is not in the best interests of both the Dominions and my State to stand independent, of course with friendly and cordial relations with both.

I accordingly approached the Dominions of India and Pakistan to enter into Standstill Agreement with my State. The Pakistan Government accepted this Agreement. The Dominion of India desired further discussions with representatives of my Government. I could not arrange this in view of the developments indicated below. In fact the Pakistan Government are operating Post and Telegraph system inside the State.

Though we have got a Standstill Agreement with the Pakistan Government that Government permitted steady and increasing strangulation of supplies like food, salt and petrol to my State.

Afridis, soldiers in plain clothes, and desperadoes with modern weapons have been allowed to infiltrate into the State at first in Poonch and then in Sialkot and finally in mass area adjoining Hazara District on the Ramkot side. The result has been that the limited number of troops at the disposal of the State had to be dispersed and thus had to face the enemy at the several points simultaneously, that it has become difficult to stop the wanton destruction of life and property and looting. The Mahora powerhouse which supplies the electric current to the whole of Srinagar has been burnt. The number of women who have been kidnapped and raped makes my heart bleed. The wild forces thus let loose on the State are marching on with the aim of capturing Srinagar, the summer Capital of my Government, as first step to over-running the whole State.

The mass infiltration of tribesmen drawn from distant areas of the North-West Frontier coming regularly in motor trucks using Mansehra-Muzaffarabad Road and fully armed with up-to-date weapons cannot possibly be done without the knowledge of the Provisional Government of the North-West Frontier Province and the Government of Pakistan. In spite of repeated requests made by my Government no attempt has been made to check these raiders or stop them from coming into my State. The Pakistan Radio even put out a story that a Provisional Government had been set up in Kashmir. The people of my State both the Muslims

and non-Muslims generally have taken no part at all.

With the conditions obtaining at present in my State and the great emergency of the situation as it exists, I have no option but to ask for help from the Indian Dominion. Naturally they cannot send the help asked for by me without my State acceding to the Dominion of India. I have accordingly decided to do so and I attach the Instrument of Accession for acceptance by your Government. The other alternative is to leave my State and my people to free-booters. On this basis no civilized Government can exist or be maintained. This alternative I will never allow to happen as long as I am Ruler of the State and I have life to defend my country.

I am also to inform your Excellency's Government that it is my intention at once to set up an interim Government and ask Sheikh Abdullah to carry the responsibilities in this emergency with my Prime Minister.

If my State has to be saved immediate assistance must be available at Srinagar. Mr. Menon is fully aware of the situation and he will explain to you, if further explanation is needed.

In haste and with kind regards,

Your sincerely,

Hari Singh

The Palace, Jammu
26th October, 1947

Instrument of Accession

Acceptance Letter – Mountbatten to Hari Singh (Dated 27 October 1947)

My dear Maharaja Sahib,

Your Highness' letter dated 26 October has been delivered to me by Mr. V. P. Menon. In the special circumstances mentioned by your Highness my Government have decided to accept the accession of Kashmir State to the Dominion of India. Consistently with their policy that in the case of any State where the issue of accession has been the subject of dispute, the question if accession should be decided in accordance with the wishes of the people of the State, it is my Government's wish that as soon as law and order have been restored in Kashmir and her soil cleared of the invader the question of the State's accession should be settled by a reference to the people.

Meanwhile in response to your Highness' appeal for military aid action has been taken today to send troops of the Indian Army to Kashmir to help your own forces to defend your territory and to protect the lives, property and honour of your people.

My Government and I note with satisfaction that your Highness has decided to invite Sheikh Abdullah to form an interim Government to work with your Prime Minister.

With kind regards, I remain,

Yours sincerely,
October 27, 1947.
Mountbatten of Burma.

INSTRUMENT OF ACCESSION OF JAMMU AND KASHMIR STATE

WHEREAS the Indian Independence Act, 1947, provides that as from the fifteenth day of August, 1947, there shall be set up an independent Dominion known as INDIA, and that the Government of India Act 1935, shall with such omissions, additions, adaptations and modifications as the Governor-General may by order specify, be applicable to the Dominion of India;

AND WHEREAS the Government of India Act, 1935, as so adapted by the Governor-General, provides that an Indian State may accede to the Dominion of India by an Instrument of Accession executed by the Ruler thereof:

NOW, THEREFORE

I Shriman Inder Mahinder Rajrajeswar Maharajadhiraj Shri Hari Singhji Jammu & Kashmir Naresh Tatha Tibbet adi Deshadhipati Ruler of JAMMU & KASHMIR STATE, in the exercise of my sovereignty in and over my said State Do hereby execute this my Instrument of Accession and

1. I hereby declare that I accede to the Dominion of India with the intent that the Governor-General of India, the Dominion Legislature, the Federal Court and any other Dominion authority established for the purposes of the Dominion shall by virtue of this my Instrument of Accession but subject always to the terms thereof, and for the purposes only of the Dominion, exercise in relation to the State of JAMMU & KASHMIR (hereinafter referred to as "this State") such functions as may be vested in them by or under the Government of India Act, 1935, as in force in the Dominion of India, on the 15th day of August 1947 (which Act as so in force is hereafter referred to as "the Act").
2. I hereby assume the obligation of ensuring that due effect is given to provisions of the Act within this State so far as they are applicable therein by virtue of this my Instrument of Accession.
3. I accept the matters specified in the schedule hereto as the matters with respect to which the Dominion Legislature may make law for this State.
4. I hereby declare that I accede to the Dominion of India on the assurance that if an agreement is made between the Governor-General and the Ruler of this State whereby any functions in relation to the administration in this State of any law of the Dominion Legislature shall be exercised by the Ruler of the State, then any such agreement shall be construed and have effect accordingly.
5. The terms of this my Instrument of Accession shall not be varied by any amendment of the Act or the Indian Independence Act, 1947, unless such amendment is accepted by me by Instrument supplementary to this Instrument.
6. Nothing in this Instrument shall empower the Dominion Legislature to make any law for this State authorizing the compulsory acquisition of land for any purpose, but I hereby undertake that should the Dominion for the purpose of a Dominion law which applies in this State deem it necessary to acquire any land, I will at their request acquire the land at their expense, or, if the land belongs to me transfer it to them on such terms as may be agreed or, in default of agreement, determined by an arbitrator to be appointed by the Chief Justice of India.
7. Nothing in this Instrument shall be deemed to commit in any way to acceptance of any future

Instrument of Accession

constitution of India or to fetter my discretion to enter into agreement with the Government of India under any such future constitution.

8. Nothing in this Instrument affects the continuance of my Sovereignty in and over this State, or, save as provided by or under this Instrument, the exercise of any powers, authority and rights now enjoyed by me as Ruler of this State or the validity of any law at present in force in this State.
9. I hereby declare that I execute this Instrument on behalf of this State and that any reference in this Instrument to me or to the Ruler of the State is to be construed as including a reference to my heirs and successors.

Given under my hand this 26th day of October, nineteen hundred and forty seven.

Hari Singh
Maharajadhiraj of Jammu and Kashmir State.

I do hereby accept this Instrument of Accession

Dated this twenty seventh day of October, nineteen hundred and forty seven.

Mountbatten of Burma
Governor General of India

SCHEDULE OF INSTRUMENT OF ACCESSION

THE MATTERS WITH RESPECT TO WHICH THE DOMINION LEGISLATURE MAY MAKE LAWS FOR THIS STATE

A. Defence

1. The naval, military and air forces of the Dominion and any other armed forces raised or maintained by the Dominion; any armed forces, including forces raised or maintained by an acceding State, which are attached to, or operating with, any of the armed forces of the Dominion.
2. Naval, military and air force works, administration of cantonment areas
3. Arms, fire-arms, ammunition.
4. Explosives.

B. External Affairs

1. External affairs; the implementing of treaties and agreements with other countries; extradition, including the surrender of criminals and accused persons to parts of His Majesty's Dominions outside India.
2. Admission into, and emigration and expulsion from, India, including in relation thereto the regulation of the movements in India of persons who are not British subjects domiciled in India or subjects of any acceding State; pilgrimages to places beyond India.
3. Naturalisation.

C. Communications

1. Posts and telegraphs, including telephones, wireless, broadcasting, and other like forms of communication.
2. Federal railways; the regulation of all railways other than minor railways in respect of safety, maximum and minimum rates and fares, station and services terminal charges, interchange of traffic and the responsibility of railway administrations as carriers of goods and passengers; the regulation of minor railways in respect of safety and the responsibility of the administrations of such railways as carriers of goods and passengers.
3. Maritime shipping and navigation, including shipping and navigation on tidal waters; Admiralty jurisdiction.
4. Port quarantine.
5. Major ports, that is to say, the declaration and delimitation of such ports, and the constitution and powers of Port Authorities therein.
6. Aircraft and air navigation; the provision of aerodromes; regulation and organisation of air traffic and of aerodromes.
7. Lighthouses, including lightships, beacons and other provisions for the safety of shipping and aircraft.

Instrument of Accession

8. Carriage of passengers and goods by sea or by air.
9. Extension of the powers and jurisdiction of members of the police force belonging to any unit to railway area outside that unit.

D. Ancillary

1. Election to the Dominion Legislature, subject to the provisions of the Act and of any Order made thereunder.
2. Offences against laws with respect to any of the aforesaid matters.
3. Inquiries and statistics for the purposes of any of the aforesaid matters.
4. Jurisdiction and powers of all courts with respect to any of the aforesaid matters but, except with the consent of the Ruler of the acceding State, not so as to confer any jurisdiction or powers upon any courts other than courts ordinarily exercising jurisdiction in or in relation to that State.

Article 370

(Part XXI.—Temporary, Transitional and Special Provisions.—Art. 370)

370.

(1) Notwithstanding anything in this Constitution,—

- (a) the provisions of article 238 shall not apply in relation to the State of Jammu and Kashmir;
- (b) the power of Parliament to make laws for the said State shall be limited to—
 - (i) those matters in the Union List and the Concurrent List which, in consultation with the Government of the State, are declared by the President to correspond to matters specified in the Instrument of Accession governing the accession of the State to the Dominion of India as the matters with respect to which the Dominion Legislature may make laws for that State; and
 - (ii) such other matters in the said Lists as, with the concurrence of the Government of the State, the President may by order specify.

Explanation.—For the purposes of this article, the Government of the State means the person for the time being recognised by the President as the Maharaja of Jammu and Kashmir acting on the advice of the Council of Ministers for the time being in office under the Maharaja's Proclamation dated the fifth day of March, 1948;

- (c) the provisions of article 1 and of this article shall apply in relation to that State;
- (d) such of the other provisions of this Constitution shall apply in relation to that State subject to such exceptions and modifications as the President may by order specify:

Provided that no such order which relates to the matters specified in the Instrument of Accession of the State referred to in paragraph (i) of sub-clause (b) shall be issued except in consultation with the Government of the State:

Provided further that no such order which relates to matters other than those referred to in the last preceding proviso shall be issued except with the concurrence of that Government.

- (2) If the concurrence of the Government of the State referred to in paragraph (ii) of sub-clause (b) of clause (1) or in the second proviso to sub-clause (d) of that clause be given before the Constituent Assembly for the purpose of framing the Constitution of the State is convened, it shall be placed before such Assembly for such decision as it may take thereon.
- (3) Notwithstanding anything in the foregoing provisions of this article, the President may, by public notification, declare that this article shall cease to be operative or shall be operative only with such exceptions and modifications and from such date as he may specify:

Provided that the recommendation of the Constituent Assembly of the State referred to in clause (2) shall be necessary before the President issues such a notification.

REGISTERED No. D. 221

The Gazette of India



EXTRAORDINARY
PART II—Section 3
PUBLISHED BY AUTHORITY

No. III] NEW DELHI, FRIDAY, MAY 14, 1954

MINISTRY OF LAW
NOTIFICATION

New Delhi, the 14th May 1954

S.R.O. 1610.—The following Order made by the President is published for general information:—

C. O. 48

THE CONSTITUTION (APPLICATION TO JAMMU AND KASHMIR) ORDER, 1954

In exercise of the powers conferred by clause (1) of article 370 of the Constitution, the President, with the concurrence of the Government of the State of Jammu and Kashmir, is pleased to make the following Order:—

1. (1) This Order may be called the Constitution (Application to Jammu and Kashmir) Order, 1954.

(2) It shall come into force on the fourteenth day of May, 1954, and shall thereupon supersede the Constitution (Application to Jammu and Kashmir) Order, 1950.

2. The provisions of the Constitution which, in addition to article 1 and article 370, shall apply in relation to the State of Jammu and Kashmir and the exceptions and modifications subject to which they shall so apply shall be as follows:—

(1) THE PREAMBLE.

(2) PART I

To article 3, there shall be added the following further proviso, namely:—

“Provided further that no Bill providing for increasing or diminishing the area of the State of Jammu and Kashmir or altering the name or boundary of that State shall be introduced in Parliament without the consent of the Legislature of that State.”

[821]

(3) PART II.

(a) This Part shall be deemed to have been applicable in relation to the State of Jammu and Kashmir as from the 26th day of January, 1950.

(b) To article 7, there shall be added the following further proviso, namely:—

“Provided further that nothing in this article shall apply to a permanent resident of the State of Jammu and Kashmir who, after having so migrated to the territory now included in Pakistan, returns to the territory of that State under a permit for re-settlement in that State or permanent return issued by or under the authority of any law made by the Legislature of that State, and every such person shall be deemed to be a citizen of India.”

(4) PART III.

(a) In article 13, references to the commencement of the Constitution, shall be construed as references to the commencement of this Order.

(b) In clause (4) of article 15, the reference to Scheduled Tribes shall be omitted.

(c) In clause (3) of article 16, the reference to the State shall be construed as not including a reference to the State of Jammu and Kashmir.

(d) In article 19, for a period of five years from the commencement of this Order:—

(i) in clauses (3) and (4) after the words “in the interests of” the words “the security of the State or” shall be inserted;

(ii) in clause (5), for the words “or for the protection of the interests of any Scheduled Tribe” the words “or in the interests of the security of the State” shall be substituted; and

(iii) the following new clause shall be added, namely:—

“(7) The words “reasonable restrictions” occurring in clauses (2), (3), (4) and (5) shall be construed as meaning such restrictions as the appropriate Legislature deems reasonable.”

(e) In clauses (4) and (7) of article 22, for the word “Parliament”, the words “the Legislature of the State” shall be substituted.

(f) In article 31, clauses (3), (4) and (6) shall be omitted; and for clause (5), there shall be substituted the following clause, namely:—

“(5) Nothing in clause (2) shall affect—

(a) the provisions of any existing law; or

(b) the provisions of any law which the State may hereafter make—

(i) for the purpose of imposing or levying any tax or penalty; or

(ii) for the promotion of public health or the prevention of danger to life or property; or

(iii) with respect to property declared by law to be evacuee property.”

(g) In article 31A, the proviso to clause (1) shall be omitted; and for sub-clause (a) of clause (2), the following sub-clause shall be substituted, namely:—

“(a) “estate” shall mean land which is occupied or has been let for agricultural purposes or for purposes subservient to agriculture, or for pasture, and includes—

(i) sites of buildings and other structures on such land;

(ii) trees standing on such land;

- (iii) forest land and wooded waste;
- (iv) area covered by or fields floating over water;
- (v) sites of *jandars* and *gharats*;
- (vi) any *jagir*, *inam*, *muafi* or *mukarrari* or other similar grant; but does not include—
 - (i) the site of any building in any town, or town area or village *abadi* or any land appurtenant to any such building or site;
 - (ii) any land which is occupied as the site of a town or village; or
 - (iii) any land reserved for building purposes in a municipality or notified area or cantonment or town area or any area for which a town planning scheme is sanctioned.

(h) In article 32, clause (3) shall be omitted; and after clause (2), the following new clause shall be inserted, namely:—

“(2A) Without prejudice to the powers conferred by clauses (1) and (2), the High Court shall have power throughout the territories in relation to which it exercises jurisdiction to issue to any person or authority, including in appropriate cases any Government within those territories, directions or orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, or any of them, for the enforcement of any of the rights conferred by this Part.”

(i) In article 35—

- (i) references to the commencement of the Constitution shall be construed as references to the commencement of this Order;
- (ii) in clause (a) (i), the words, figures and brackets “clause (3) of article 16, clause (3) of article 32” shall be omitted; and
- (iii) after clause (b), the following clause shall be added, namely:—

“(c) no law with respect to preventive detention made by the Legislature of the State of Jammu and Kashmir, whether before or after the commencement of the Constitution (Application to Jammu and Kashmir) Order, 1954, shall be void on the ground that it is inconsistent with any of the provisions of this Part, but any such law shall, to the extent of such inconsistency, cease to have effect on the expiration of five years from the commencement of the said Order, except as respects things done or omitted to be done before the expiration thereof”.

(j) After article 35, the following new article shall be added, namely:—

“35A. *Saving of laws with respect to permanent residents and their rights.*—Notwithstanding anything contained in this Constitution, no existing law in force in the State of Jammu and Kashmir, and no law hereafter enacted by the Legislature of the State,—

(a) defining the classes of persons who are, or shall be, permanent residents of the State of Jammu and Kashmir; or

(b) conferring on such permanent residents any special rights and privileges or imposing upon other persons any restrictions as respects—

- (i) employment under the State Government;
- (ii) acquisition of immovable property in the State;
- (iii) settlement in the State; or

- (iv) right to scholarships and such other forms of aid as the State Government may provide,

shall be void on the ground that it is inconsistent with or takes away or abridges any rights conferred on the other citizens of India by any provision of this Part."

(5) PART V.

(a) In articles 54 and 55, references to the elected members of the House of the People and to each such member shall include references to the representatives of the State of Jammu and Kashmir in that House; and the population of the State shall be deemed to be forty-four lakhs and ten thousand.

(b) In the proviso to clause (1) of article 73, the words "or in any law made by Parliament" shall be omitted.

(c) Article 81 shall apply subject to the modification that the representatives of the State in the House of the People shall be appointed by the President on the recommendation of the Legislature of the State.

(d) In article 134, clause (2), after the words "Parliament may", the words "on the request of the Legislature of the State" shall be inserted.

(e) Articles 135, 136 and 139 shall be omitted.

(f) In articles 149 and 150, references to the States shall be construed as not including the State of Jammu and Kashmir.

(g) In article 151, clause (2) shall be omitted.

(6) PART XI.

(a) In article 246, the words, brackets and figures "Notwithstanding anything in clauses (2) and (3)" occurring in clause (1), and clauses (2), (3) and (4) shall be omitted.

(b) Articles 248 and 249 shall be omitted.

(c) In article 250, for the words "to any of the matters enumerated in the State List", the words "also to matters not enumerated in the Union List" shall be substituted.

(d) In article 251, for the words and figures, "articles 249 and 250", the word and figures "article 250" shall be substituted, and the words "under this Constitution" shall be omitted; and, for the words "under either of the said articles", the words "under the said article" shall be substituted.

(e) To article 253, the following proviso shall be added, namely:—

"Provided that after the commencement of the Constitution (Application to Jammu and Kashmir) Order, 1954, no decision affecting the disposition of the State of Jammu and Kashmir shall be made by the Government of India without the consent of the Government of that State."

(f) In article 254, the words, brackets and figure "or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2)" and the words "or as the case may be, the existing law", occurring in clause (1), and the whole of clause (2) shall be omitted.

(g) Article 255 shall be omitted.

(h) Article 256 shall be renumbered as clause (1) of that article, and the following new clause shall be added thereto, namely:—

“(2) The State of Jammu and Kashmir shall so exercise its executive power as to facilitate the discharge by the Union of its duties and responsibilities under the Constitution in relation to that State; and in particular, the said State shall, if so required by the Union, acquire or requisition property on behalf and at the expense of the Union, or if the property belongs to the State, transfer it to the Union on such terms as may be agreed, or in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India.”

(i) Article 259 shall be omitted.

(j) In clause (2) of article 261, the words “made by Parliament” shall be omitted.

(7) PART XII.

(a) Clause (2) of article 267, article 273, clause (2) of article 283, articles 290 and 291 shall be omitted.

(b) In articles 266, 282, 284, 298, 299 and 300, references to the State or States shall be construed as not including references to the State of Jammu and Kashmir.

(c) In articles 277 and 295, references to the commencement of the Constitution shall be construed as references to the commencement of this Order.

(8) PART XIII.

(a) In clause (1) of article 303, the words “by virtue of any entry relating to trade and commerce in any of the Lists in the Seventh Schedule” shall be omitted.

(b) In article 306, references to the commencement of the Constitution shall be construed as references to the commencement of this Order.

(9) PART XIV.

In article 308, after the words “First Schedule”, the words “other than the State of Jammu and Kashmir” shall be added.

(10) PART XV.

(a) Article 324 shall apply only in so far as it relates to elections to Parliament and to the offices of President and Vice-President.

(b) Articles 325, 326, 327, 328 and 329 shall be omitted.

(11) PART XVI.

(a) In article 330, references to the “Scheduled Tribes” shall be omitted.

(b) Articles 331, 332, 333, 336, 337, 339 and 342 shall be omitted.

(c) In articles 334 and 335, references to the State or the States shall be construed as not including references to the State of Jammu and Kashmir.

(12) PART XVII.

The provisions of this Part shall apply only in so far as they relate to —

- (i) the official language of the Union;
- (ii) the official language for communication between one State and another, or between a State and the Union; and
- (iii) the language of the proceedings in the Supreme Court.

(13) PART XVIII.

(a) To article 352, the following new clause shall be added, namely:—

“(4) No Proclamation of Emergency made on grounds only of internal disturbance or imminent danger thereof shall have effect in relation to the State of Jammu and Kashmir (except as respects article 354) unless it is made at the request or with the concurrence of the Government of that State.”

(b) Articles 356, 357 and 360 shall be omitted.

(14) PART XIX.

(a) In article 361, after clause (4), the following clause shall be added, namely:—

“(5) The provisions of this article shall apply in relation to the Sadar-i-Riyasat of Jammu and Kashmir as they apply in relation to a Rajpramukh, but without prejudice to the provisions of the Constitution of that State.”

(b) Articles 362 and 365 shall be omitted.

(c) In article 366, clause (21) shall be omitted.

(d) To article 367, there shall be added the following clause, namely:—

“(4) For the purposes of this Constitution as it applies in relation to the State of Jammu and Kashmir—

(a) references to this Constitution or to the provisions thereof shall be construed as references to the Constitution or the provisions thereof as applied in relation to the said State;

(b) references to the Government of the said State shall be construed as including references to the Sadar-i-Riyasat acting on the advice of his Council of Ministers;

(c) references to a High Court shall include references to the High Court of Jammu and Kashmir;

(d) references to the Legislature or the Legislative Assembly of the said State shall be construed as including references to the Constituent Assembly of the said State;

(e) references to the permanent residents of the said State shall be construed as meaning persons who, before the commencement of the Constitution (Application to Jammu and Kashmir) Order, 1954, were recognised as State subjects under the laws in force in the State or who are recognised by any law made by the Legislature of the State as permanent residents of the State; and

(f) references to the Rajpramukh shall be construed as references to the person for the time being recognised by the President as the Sadar-i-Riyasat of Jammu and Kashmir and as including references to any person for the time being recognised by the President as being competent to exercise the powers of the Sadar-i-Riyasat.

(15) PART XX.

To article 368, the following proviso shall be added, namely:—

“Provided further that no such amendment shall have effect in relation to the State of Jammu and Kashmir unless applied by order of the President under clause (1) of article 370”.

(16) PART XXI.

(a) Articles 369, 371, 373, clauses (1), (2), (3) and (5) of article 374 and articles 376 to 392 shall be omitted.

(b) In article 372—

(i) clauses (2) and (3) shall be omitted,

(ii) references to the laws in force in the territory of India shall include references to *hidayats, ailians, ishtihars, circulars, robkars, irshads, yadashts*, State Council Resolutions, Resolutions of the Constituent Assembly, and other instruments having the force of law in the territory of the State of Jammu and Kashmir; and

(iii) references to the commencement of the Constitution shall be construed as references to the commencement of this Order.

(c) In clause (4) of article 374, the reference to the authority functioning as the Privy Council of a State shall be construed as a reference to the Advisory Board constituted under the Jammu and Kashmir Constitution Act, 1996, and references to the commencement of the Constitution shall be construed as references to the commencement of this Order.

(17) PART XXII.

Articles 394 and 395 shall be omitted.

(18) FIRST SCHEDULE.

(19) SECOND SCHEDULE.

Paragraph 6 shall be omitted.

(20) THIRD SCHEDULE.

Forms V, VI, VII and VIII shall be omitted.

(21) FOURTH SCHEDULE.

(22) SEVENTH SCHEDULE.

(a) In the Union List—

(i) for entry 3, the entry “3. Administration of cantonments” shall be substituted;

(ii) entries 8, 9, 33 and 34, the words “trading corporations including” in entry 43, entries 44, 50, 52, 54, 55, 60, 67, 69, 78 and 79, the words “inter-State migration” in entry 81, and entry 97 shall be omitted;

(iii) for entry 53, the entry “53. Petroleum and Petroleum Produces, but excluding the regulation and development of oilfields and mineral oil resources; other liquids and substances declared by Parliament by law to be dangerously inflammable” shall be substituted; and

(iv) in entries 72 and 76, the reference to the States shall be construed as not including a reference to the State of Jammu and Kashmir.

(b) The State List and the Concurrent List shall be omitted.

(23) EIGHTH SCHEDULE.

(24) NINTH SCHEDULE.

After entry 13, the following entries shall be added, namely:—

- “14. The Jammu and Kashmir Big Landed Estates Abolition Act (No. XVII of 2007).
15. The Jammu and Kashmir Restitution of Mortgaged Properties Act (No. XVI of 2006).
16. The Jammu and Kashmir Tenancy Act (No. II of 1980).
17. The Jammu and Kashmir Distressed Debtors Relief Act (No. XVII of 2006).
18. The Jammu and Kashmir Alienation of Land Act (No. V of 1995).
19. Order No. 6-H of 1951, dated 10th March 1951 regarding Resumption of Jagirs and other assignments of Land Revenue etc.
20. The Jammu and Kashmir State Kuth Act (No. I of 1978).”

RAJENDRA PRASAD,
President.

K. Y. BHANDARKAR,
Secretary.

रजिस्ट्री सं० डी० एल०-33004/99

REGD. NO. D. L.-33004/99

भारत का राजपत्र
The Gazette of India

असाधारण

EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (i)

PART II—Section 3—Sub-section (i)

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं. 444]	नई दिल्ली, सोमवार, अगस्त 5, 2019/श्रावण 14, 1941
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विधि एवं न्याय मंत्रालय

(विधायी विभाग)

अधिसूचना

नई दिल्ली, 5 अगस्त, 2019

सा. का. नि. 551(अ).—राष्ट्रपति द्वारा किया गया निम्नलिखित आदेश सर्वसाधारण की सूचनार्थ प्रकाशित किया जाता है:—

संविधान (जम्मू और कश्मीर में लागू) आदेश, 2019

सी. ओ. 272

संविधान के अनुच्छेद 370 के खंड (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, राष्ट्रपति, जम्मू और कश्मीर राज्य सरकार की सहमति से निम्नलिखित आदेश करते हैं:—

1. (1) इस आदेश का नाम संविधान (जम्मू और कश्मीर पर लागू) आदेश, 2019 है।

(2) यह तुरन्त प्रवृत्त होगा और इसके बाद यह समय-समय पर यथा संशोधित संविधान (जम्मू और कश्मीर पर लागू) आदेश, 1954 का अधिक्रमण करेगा।

2. समय-समय पर यथा संशोधित संविधान के सभी उपबंध जम्मू और कश्मीर राज्य के संबंध में लागू होंगे और जिन अपवादों और आशोधनों के अधीन ये लागू होंगे वे निम्न प्रकार होंगे:—

अनुच्छेद 367 में निम्नलिखित खंड जोड़ा जाएगा, अर्थात्:—

“(4) संविधान, जहां तक यह जम्मू और कश्मीर के संबंध में लागू है, के प्रयोजनों के लिए—

(क) इस संविधान या इसके उपबंधों के निर्देशों को, उक्त राज्य के संबंध में यथा लागू संविधान और उसके उपबंधों का निर्देश माना जाएगा;

(ख) जिस व्यक्ति को राज्य की विधान सभा की सिफारिश पर राष्ट्रपति द्वारा जम्मू एवं कश्मीर के सदर-ए-रियासत, जो तत्स्थानिक रूप से पदासीन राज्य की मंत्रि परिषद की सलाह पर कार्य कर रहे हैं, के रूप में तत्स्थानिक रूप से मान्यता दी गई है, उनके लिए निर्देशों को जम्मू एवं कश्मीर के राज्यपाल के लिए निर्देश माना जाएगा।

(ग) उक्त राज्य की सरकार के निर्देशों को, उनकी मंत्रिपरिषद की सलाह पर कार्य कर रहे जम्मू एवं कश्मीर के राज्यपाल के लिए निर्देशों को शामिल करता हुआ माना जाएगा; तथा

3985 GI/2019

(1)

(घ) इस संविधान के अनुच्छेद 370 के परंतुक में “खंड (2) में उल्लिखित राज्य की संविधान सभा” अभिव्यक्ति को “राज्य की विधान सभा” पढ़ा जाएगा।”

राम नाथ कोविंद,
राष्ट्रपति।

[फा.सं. 19(2)/2019-विधायी 1]

डॉ. जी. नारायण राजू, सचिव

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

NOTIFICATION

New Delhi, the 5th August, 2019

G.S.R .551(E).— the following Order made by the President is published for general information:—

THE CONSTITUTION (APPLICATION TO JAMMU AND KASHMIR) ORDER, 2019

C.O. 272

In exercise of the powers conferred by clause (1) of article 370 of the Constitution, the President, with the concurrence of the Government of State of Jammu and Kashmir, is pleased to make the following Order:—

1. (1) This Order may be called the Constitution (Application to Jammu and Kashmir) Order, 2019.
- (2) It shall come into force at once, and shall thereupon supersede the Constitution (Application to Jammu and Kashmir) Order, 1954 as amended from time to time.
2. All the provisions of the Constitution, as amended from time to time, shall apply in relation to the State of Jammu and Kashmir and the exceptions and modifications subject to which they shall so apply shall be as follows:—

To article 367, there shall be added the following clause, namely:—

“(4) For the purposes of this Constitution as it applies in relation to the State of Jammu and Kashmir—

(a) references to this Constitution or to the provisions thereof shall be construed as references to the Constitution or the provisions thereof as applied in relation to the said State;

(b) references to the person for the time being recognized by the President on the recommendation of the Legislative Assembly of the State as the *Sadar-i-Riyasat* of Jammu and Kashmir, acting on the advice of the Council of Ministers of the State for the time being in office, shall be construed as references to the Governor of Jammu and Kashmir;

(c) references to the Government of the said State shall be construed as including references to the Governor of Jammu and Kashmir acting on the advice of his Council of Ministers; and

(d) in proviso to clause (3) of article 370 of this Constitution, the expression “Constituent Assembly of the State referred to in clause (2)” shall read “Legislative Assembly of the State”.”

RAM NATH KOVIND,
President.

[F. No. 19(2)/2019-Leg.1]

Dr. G. NARAYANA RAJU, Secy.

रजिस्ट्री सं० डी० एल०-33004/99

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असाधारण

EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (i)

PART II—Section 3—Sub-section (i)

प्राधिकार से प्रकाशित

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(विधायी विभाग)

अधिसूचना

नई दिल्ली, 6 अगस्त, 2019

सा.का.नि. 562(अ).—राष्ट्रपति द्वारा की गई निम्नलिखित घोषणा सर्वसाधारण की जानकारी के लिए अधिसूचित की जाती है :-

संविधान के अनुच्छेद 370(3) के अधीन घोषणा

“सं. आ. 273”

राष्ट्रपति, संसद की सिफारिश पर भारत के संविधान के अनुच्छेद 370 के खंड (1) के साथ पठित अनुच्छेद 370 के खंड (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करते हैं कि 6 अगस्त, 2019 से उक्त अनुच्छेद 370 के सभी खंड, सिवाय निम्नलिखित के, जो नीचे दिए गए के अनुसार हैं, प्रचालन में नहीं रहेंगे, अर्थात् :-

“370. इस संविधान के समय-समय पर यथा-संशोधित, सभी उपबंध बिना किन्हीं उपांतरणों या अपवादों के अनुच्छेद 152 या अनुच्छेद 308 या इस संविधान के किसी अन्य अनुच्छेद या जम्मू-कश्मीर के संविधान में किसी अन्य उपबंध या किसी विधि, दस्तावेज, निर्णय, अध्यादेश, आदेश, उपविधि, नियम, विनियम, अधिसूचना या भारत के राज्यक्षेत्र में विधि का बल रखने वाली किसी रूढ़ि या प्रथा या किसी अन्य लिखत, संधि या करार जो अनुच्छेद 363 के अधीन यथा परिकल्पित या अन्यथा है, में तत्प्रतिकूल किसी बात के अंतर्विष्ट होते हुए भी, जम्मू-कश्मीर राज्य को लागू होंगे।”

राम नाथ कोविंद,
राष्ट्रपति।

[फा. सं. 19(3)/2019-वि. 1]

डॉ. जी. नारायण राजू, सचिव

4056 GI/2019

(1)

MINISTRY OF LAW AND JUSTICE**(Legislative Department)****NOTIFICATION**

New Delhi, the 6th August, 2019

G.S.R . 562(E).— The following Declaration made by the President is notified for general information:—**DECLARATION UNDER ARTICLE 370(3) OF THE CONSTITUTION****"C.O. 273"**

In exercise of the powers conferred by clause (3) of article 370 read with clause (1) of article 370 of the Constitution of India, the President, on the recommendation of Parliament, is pleased to declare that, as from the 6th August, 2019, all clauses of the said article 370 shall cease to be operative except the following which shall read as under, namely :—

"370. All provisions of this Constitution, as amended from time to time, without any modifications or exceptions, shall apply to the State of Jammu and Kashmir notwithstanding anything contrary contained in article 152 or article 308 or any other article of this Constitution or any other provision of the Constitution of Jammu and Kashmir or any law, document, judgement, ordinance, order, by-law, rule, regulation, notification, custom or usage having the force of law in the territory of India, or any other instrument, treaty or agreement as envisaged under article 363 or otherwise."

RAM NATH KOVIND,

President.

[F. No. 19(3)/2019-Leg. 1]

Dr. G. NARAYANA RAJU, Secy.